

# Skirmer Lndfl. Site

EPA Region 5 Records Ctr.



209428

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

5-25-00

90-11-3-1620

UNITED STATES OF AMERICA

Plaintiff,

v.

ELSA SKINNER-MORGAN, etal.

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

2/19/01  
•J  
Lx:  
J. L. [unclear]  
[unclear]  
[unclear]

Done

## TABLE OF CONTENTS

I.	BACKGROUND .....	1
II.	JURISDICTION .....	5
III.	PARTIES BOUND .....	5
IV.	DEFINITIONS .....	6
V.	GENERAL PROVISIONS .....	14
VI.	DETERMINATIONS AS TO SETTLING DE MINIMIS DEFENDANTS AND SETTLING DE MINIMIS FEDERAL AGENCIES .....	17
VII.	PERFORMANCE OF THE WORK BY SETTLING GENERATOR/TRANSPORTER DEFENDANTS .....	18
VIII.	REMEDY REVIEW .....	31
IX.	QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS .....	33
X.	ACCESS AND INSTITUTIONAL CONTROLS .....	35
XI.	SETTLING OWNER/OPERATOR DEFENDANTS' OBLIGATIONS WITH REGARD TO THE TRANSFER OF REAL PROPERTY INTERESTS IN THE SITE .....	42
XII.	REPORTING REQUIREMENTS .....	51
XIII.	EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS .....	54
XIV.	PROJECT COORDINATORS .....	56
XV.	ASSURANCE OF ABILITY TO COMPLETE WORK .....	57
XVI.	CERTIFICATION OF COMPLETION .....	57
XVII.	EMERGENCY RESPONSE .....	62
XVIII.	REIMBURSEMENT OF RESPONSE COSTS BY SETTLING GENERATOR/TRANSPORTER DEFENDANTS .....	63
XIX.	REIMBURSEMENT OF RESPONSE COSTS BY SETTLING FEDERAL AGENCIES AND SETTLING DE MINIMIS FEDERAL AGENCIES .....	68
XX.	REIMBURSEMENT OF RESPONSE COSTS BY SETTLING DE MINIMIS DEFENDANTS .....	70

XXI. PROCEDURES FOR THE REIMBURSEMENT OF RESPONSE COSTS. . . . .	71
XXII. CREATION AND USE OF SKINNER SPECIAL ACCOUNT. . . . .	73
IX • INDEMNIFICATION AND INSURANCE. . . . .	80
XXIV. FORCE MAJEURE. . . . .	83
XXV. DISPUTE RESOLUTION. . . . .	86
XXVI. STIPULATED PENALTIES. . . . .	90
XXVII. COVENANTS BY PLAINTIFF WITH RESPECT TO NONDE MININGS PARTIES . . . . .	99
XXVIII. COVENANTS WITH RESPECT TO SETTLING DE MINIMIS DEFENDANTS AND SETTLING DE MINIMIS FEDERAL AGENCIES. . . . .	104
XXIX. COVENANTS BY SETTLING DEFENDANTS, SETTLING FEDERAL AGENCIES, AND SETTLING DE MINIMIS FEDERAL AGENCIES. . . . .	107
XXX. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION. . . . .	114
XXXI. ACCESS TO INFORMATION. . . . .	116
XXXII. CERTIFICATION OF SETTLING DE MINIMIS DEFENDANTS. . . . .	117
XXXIII. RETENTION OF RECORDS. . . . .	118
XXXIV. NOTICES AND SUBMISSIONS. . . . .	120
XXXV. EFFECTIVE DATE. . . . .	122
XXXVI. RETENTION OF JURISDICTION. . . . .	122
XXXVII. APPENDICES. . . . .	123
XXXIII. COMMUNITY RELATIONS. . . . .	124
XXXIX. MODIFICATION. . . . .	124
XL. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT. . . . .	125
XLI. SIGNATORIES/SERVICE. . . . .	125
XLII. FINAL JUDGMENT. . . . .	126

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

_____	)	
UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	
	)	
ELSA SKINNER-MORGAN, et al.	)	
	)	
Defendants.	)	
	)	

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Skinner Landfill Superfund Site in West Chester, Ohio; and (2) performance of response work by the Defendants at the Site consistent with the National Contingency Plan, 40 CFR Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA provided the State of Ohio (the "State") with an opportunity to participate in negotiations with the Settling Defendants and be a party to this Consent Decree.

D. In accordance with Section 1220(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. Defendants allege that certain agencies of the United States, ("Settling Federal Agencies and Settling De Minimis Federal Agencies,") and certain other parties are potentially responsible parties under CERCLA Sections 107 and 113, 42 U.S.C. §§ 9607 and 9613.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies and the Settling De Minimis Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any claim or counterclaim of any the Settling Defendants.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 CFR Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA performed a Remedial Investigation and Feasibility Study ("RI/FS") for the Site, in accordance with 40 C.F.R. 300.430.

I. EPA completed the RI Report in May 1991, and completed the FS Report in April 1992.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 27, 1992, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the interim response action.

K. The decision by EPA on an "interim" remedial action to be implemented at the Site was embodied in an interim Record of Decision ("Interim ROD"), executed on September 30, 1992, on which the State gave its concurrence. The Interim ROD includes EPA's explanation for any significant differences between the Interim ROD and the proposed plan as well as a responsiveness summary to the public comments. Notice of the Interim ROD was published in accordance with Section 117(b) of CERCLA.

L. Subsequent to the issuance of the Interim ROD, a Unilateral Administrative Order ("UAO") for the performance of the remedial response actions identified in the Interim ROD, was issued to several potentially responsible parties at the Skinner Landfill facility. Several of those parties fully complied with the UAO. The costs incurred by those parties in performing the response actions identified in the Interim ROD were consistent with the NCP.

M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the proposed plan for final remedial action in December 1992, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for final remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the final response action.

N. The decision by EPA on the final remedial action to be implemented at the Site was embodied in a final record of decision ("ROD"), executed on June 4, 1993, on which the State gave its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the ROD was published in accordance with Section 117(b) of CERCLA.

O. Subsequent to the issuance of the final ROD, EPA and several of the Settling Defendants entered into an Administrative Order by Consent ("AOC"), effective March 29, 1994, for the design of the remedial action selected in the final ROD. The following companies signed the AOC: The Dow Chemical Company, Ford Motor Company, Monsanto Company, Morton International, Inc., PPG Industries, Inc., Velsicol Chemical Corporation, and GE Aircraft Engines ("AOC Respondents"). Pursuant to the AOC, the AOC Respondents performed the Remedial Design for the Remedial Action. EPA approved the Remedial Design on June 18, 1996. The costs incurred by the AOC Respondents in performing the Remedial Design were consistent with the NCP.

P. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Generator/Transporter Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

Q. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Generator/Transporter Defendants shall constitute a response action taken or ordered by the President.

R. The Parties also desire to facilitate the future re-use of the Site, according to the Consent Decree's provisions. The obligations of the Settling Owner/Operator Defendants under this Consent Decree, in particular, are designed to facilitate this future of the Site.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Decree and the underlying complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. No Party shall challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors, assigns, and heirs. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Generator/Transporter Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Generator/Transporter Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon



performance of the Work in conformity with the terms of this Consent Decree. Settling Generator/Transporter Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Generator/Transporter Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Generator/Transporter Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 ~~et seq.~~

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXVII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Contaminated Site Groundwater" shall mean Site Groundwater with contaminant levels greater than the Revised Modified Trigger Levels, which are incorporated into this Consent Decree as Appendix B-2.

"Court-Authorized ADR Allocation Process" shall process mandated by the Court for the parties to the litigation al. v. Acme Wrecking Co., Inc. et al. (C-1-97-307) and 71 Sun Oil Company d/b/a Sunoco Oil Corp., et al. (C-1-97- were allegedly liable at the Skinner Landfill Site, but not litigation, also participated voluntarily in this process.

"Day" shall mean a calendar day unless expressly day" shall mean a day other than a Saturday, Sunday, or Federal or state holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or state holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs that the United States incurs after the effective date of this Consent Decree in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, the costs incurred pursuant to Sections VIII (Remedy Review), X (Access And Institutional Control), XVII (Emergency Response), and Paragraph 128 of Section XXVII (Covenants by Plaintiff With Respect to Non-De Minimis Parties).

"Institutional Control" shall mean an enforceable restriction which limits access to or use of the Site such that exposure to hazardous substances is effectively and reliably eliminated or mitigated, and/or the integrity of the Remedial Action is protected.

"Interest" shall mean interest at the rate specified for the Hazardous Substance Superfund established under Subchapter U of the U.S. Code, compounded on October 1 of each year, in accordance with the provisions of the U.S. Code.

"Matters Addressed" shall mean all response actions taken with the Site, and the payment of all Response Costs incurred by the States or any other person at or in connection with the Site pursuant to this Consent Decree.

"MSW Policy" shall mean EPA's "Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites" (February 5, 1998).

"Municipal Sewage Sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

"Municipal Solid Waste" shall mean household waste and solid waste collected from nonresidential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 CFR Part 300, and any amendments thereto.

"Ohio EPA" shall mean the State of Ohio Environmental Protection Agency and its successor departments or agencies of the State.

"Operation and Maintenance" or "O & M" shall mean all actions necessary to ensure the effectiveness of the Remedial Action as required under the Operational Plan approved or developed by EPA pursuant to this Consent Decree and

"Optionee" shall mean OXY USA, in its capacity as the holder of the Option under Section XI. of this Consent Decree (Settling Owner/Operator Defendants' Obligations with Regard to the Transfer of Real Property Interests in the Site) and, if applicable, its successors and assigns in such capacity.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States (including the Settling Federal Agencies and the Settling De Minimis Federal Agencies), the Settling Generator/Transporter Defendants, the Settling De Minimis Defendants, and the Settling Owner/Operator Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through June 30, 1999, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action set forth in Attachment 3 and Table 3 of the ROD or defined in Section VII of this Consent Decree, except to the extent that EPA determines that any such Performance Standard is technically infeasible.

"Plaintiff" shall mean the United States, on behalf of EPA.

"Plaintiffs' Group" consists of the plaintiffs in The Dow Chemical Company, et. al. v. Acme Wrecking Co., Inc. et al. (C-1-97-307) and The Dow Chemical Company, et al. v. Sun Oil Company d/b/a Sunoco Oil Corp., et al. (C-1-97-0308) (S.D. Ohio).

"Points of Compliance" shall mean, for the downgradient groundwater control system, the line of monitoring wells between the interception system alignment and the East Fork of Mill Creek, as shown in Appendix B-1.

"Publicly Owned Treatment Works" or "POTW" shall mean the Butler County Regional Wastewater System.

"Prospective Purchaser" shall mean any person or persons, unrelated to the Settling Owner/Operator Defendants listed in Appendix E, who purchases the Site or any portion of the Site, with the intent of re-using the purchased portion pursuant to an EPA-approved plan for reuse, and who also agrees to comply with the obligations for a Prospective Purchaser set forth in this Consent Decree, and in any prospective purchaser agreement subsequently negotiated between the Prospective Purchaser and EPA.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the final EPA Record of Decision relating to the Site signed on June 4, 1993, by the Regional Administrator, EPA Region V, or his delegate, and all attachments thereto. The ROD is attached as Appendix A to this Consent Decree.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Generator/Transporter Defendants to implement the Remedial Design and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any supplements or amendments thereto.

"Remedial Design" shall mean the final Remedial Design document, which was produced pursuant to the Remedial Design AOC, and approved by EPA on June 18, 1996 and any EPA-approved supplements or amendments thereto. The Remedial Design is incorporated as Appendix B to this Consent Decree.

"Remedial Design AOC" shall mean the Administrative Order on Consent, effective March 29, 1994, entered into by EPA, and a group of PRPs whose names are set forth in Paragraph O of this Consent Decree, to produce the Remedial Design for the ROD at the Site.

"Remedial Design SOW" shall mean the Statement of Work which was incorporated into the Remedial Design AOC, and is also incorporated into this Consent Decree as Appendix B-3.

"Response Costs" shall mean all costs of removal or remedial action, at or in relation to the Site, incurred by the United States not inconsistent with the NCP and all costs of removal or remedial action, at or in connection with the Site, incurred by any other person consistent with the NCP.

"Revised Modified Trigger Levels" shall mean those contaminant levels for the parameters in the Site Groundwater which are incorporated into this Consent Decree as Appendix B-2.

"Scrap Metal" shall mean bits and pieces of metal parts (*e.g.*, bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (*e.g.*, radiators, scrap automobiles, railroad box cars and other metal pieces), which when worn or superfluous can be recycled.

"Section" shall mean a portion of this Consent Decree identifying

"Settling Defendants" shall mean, collectively, the Settling Generator/Transporter Defendants, the Settling Owner/Operator Defendants, and the Settling

"Settling De Minimis Defendants" shall mean those parties identified in this Consent Decree.

"Settling De Minimis Federal Agencies" and "Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States, separately identified in Appendix F, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree.

"Settling Generator/Transporter Defendants" shall mean those Parties identified in Appendix D.

"Settling Municipalities" shall mean any municipalities reaching a settlement of their liability with the United States, by means of a separate administrative or judicial agreement, pursuant to EPA's MSW policy, on or before the date this Consent Decree is entered by the Court.

"Settling Non-De Minimis Defendants" shall mean, collectively, the Settling Generator/Transporter Defendants and the Settling Owner/Operator Defendants.

"Settling Owner/Operator Defendants" shall mean those parties identified in Appendix E. Appendix E also specifically identifies the spouse of the Settling Owner, who does not hold title to the Site, and who is made a party to this Consent Decree solely for the purpose of agreeing to waive his dower rights on any conveyance of the Site or any part thereof pursuant to Section XI of the Consent Decree (Settling Owner/Operator Defendants' Obligations with Regard to the Transfer of Real Property Interests in the Site).

"Site" shall mean the Skinner Landfill Superfund site, encompassing approximately 67 acres, located 1/4 mile east of Interstate 75 on the Cincinnati-Dayton Road in West Chester, Union Township, Ohio, and legally described on Appendix C-1 and depicted on the survey of the Site attached as Appendix C-2.

"Site Groundwater" shall mean all groundwater intercepted by the groundwater interception system and groundwater which traverses through or below the area to be capped and which would, if not captured, pass into or under the East Fork of Mill Creek.

"State" shall mean the State of Ohio.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Generator/Transporter Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities, which includes without limitation EPA, the Settling Federal Agencies, the Settling De Minimis Federal Agencies, and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6904(27).

"Work" shall mean all activities Settling Generator/Transporter Defendants are required to perform under this Consent Decree, except those required by Section XXXIII. (Retention of Records). For on-Site activities, the Work must attain a requirement that is promulgated or modified after June 4, 1993, the date of the signature of the ROD, only when the Regional



Administrator, Region 5, EPA, or the Regional Administrator's finding based on the best scientific judgment available to EPA to ensure that the Work is protective of human health and the e § 300.430(f)(1)(ii)(B)(1).

## V. GENERAL PROVISION

### 5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare and the environment at the Site by implementation of the Remedial Design at the Site by the Settling Generator/Transporter Defendants, to facilitate the future re-use of the Site, to reimburse response costs of the Plaintiff and certain other Parties that have incurred Response Costs, and to resolve the claims of Plaintiff against Settling Defendants and the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree. With regard to the Settling De Minimis Defendants and the Settling De Minimis Federal Agencies, the objectives of all of the Parties to this Consent Decree are: to obtain settlement with Settling De Minimis Defendants and the Settling De Minimis Federal Agencies for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties, and to provide for full and complete contribution protection for Settling De Minimis Defendants and the Settling De Minimis Federal Agencies with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

6. Commitments by Settling Defendants and Se

a. Settling Generator/Transporter Defendar  
in accordance with this Consent Decree, the ROD, the Rerr  
other plans, standards, specifications, and schedules set for  
Generator/Transporter Defendants and approved by EPA p

b. All Settling Defendants shall reimburse 1  
Generator/Transporter Defendants for Past Response Cost:  
provided in this Consent Decree. The Settling Federal Agencies shall reimburse the EPA  
Hazardous Substance Superfund for Past Response Costs and Future Response Costs, as  
provided in this Consent Decree. The Settling De Minimis Federal Agencies shall reimburse  
EPA for Past and Future Response Costs and the Plaintiffs' Group as provided in this Consent  
Decree.

c. The obligations of the Settling Generator/Transporter Defendants to finance  
and perform the Work and to pay the Response Costs of the United States under this Consent  
Decree are joint and several. In the event of the insolvency or other failure of any one or more  
Settling Generator/Transporter Defendants to implement the requirements of this Consent  
Decree, the remaining Settling Generator/Transporter Defendants shall complete all such  
requirements.

7. Compliance With Applicable Law

In implementing on-Site Work, Settling Generator/Transporter Defendants must comply  
with all applicable or relevant and appropriate requirements ("ARARS") of all Federal and state  
environmental laws as set forth in the ROD and the Remedial Design unless any such ARAR is

waived in writing by EPA. All other activities undertaken by Settling Generator/Transporter Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws. The Work conducted pursuant to this Consent Decree, if approved or directed by EPA, shall be deemed consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the Site or in very close proximity to the Site and necessary for implementation of the Work). In the event that an on-site surface water discharge is required, Settling Generator/Transporter Defendants need not obtain a permit, but must comply with the applicable substantive surface water discharge limits. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Generator/Transporter Defendants shall submit timely and complete applications and take all other reasonable actions necessary to obtain all such permits or approvals.

b. The Settling Generator/Transporter Defendants may seek relief under the provisions of Section XXIV. (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a (1) failure to obtain, or (2) a delay in obtaining (or delay related to the appeal of any permit, term or condition where EPA has concurred with the substance of the appeal), any permit required for the Work. The Settling Generator/Transporter Defendants shall not be subject to any stipulated or statutory penalties for delays in work caused predominantly by a governmental entity's delayed issuance or denial of a permit (or delay related to the appeal of any permit, term or condition where EPA has concurred with the substance of the

appeal). The Settling Generator/Transporter Defendants shall have the burden, under a preponderance of the evidence standard, that any such delay is caused by the involved governmental entity.

c. This Consent Decree is not, and shall not be construed to be, in violation of any federal or state statute or regulation.

VI. DETERMINATIONS AS TO SETTling DE MINIMIS DEFENDANTS AND SETTling DE MINIMIS FEDERAL AGENCIES

9. The Regional Administrator of EPA, Region V, or his delegates, has determined the following:

a. prompt settlement with each Settling De Minimis Defendant and Settling De Minimis Federal Agency is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the payment to be made by each Settling De Minimis Defendant and Settling De Minimis Federal Agency under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C.

§ 9622(g)(1), based upon EPA's estimate that the total Response Costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is approximately \$21 million.

c. the amount of hazardous substances contributed to the Site by each Settling De Minimis Defendant and Settling De Minimis Federal Agency and the toxic or other hazardous effects of the hazardous substances, if any, contributed to the Site by each Settling De Minimis Defendant and Settling De Minimis Federal Agency are minimal in comparison to other

hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because (1) the amount of materials containing hazardous substances contributed to the Site by each Settling De Minimis Defendant and Settling De Minimis Federal Agency does not exceed 1.5% of the total volume of waste disposed of at the Site; and (2) the hazardous substances contributed by each Settling De Minimis Defendant and each Settling De Minimis Federal Agency to the Site are not significantly more toxic or are not of significantly greater hazardous effect than other hazardous substances at the Site.

VII. PERFORMANCE OF THE WORK BY SETTLING  
GENERATOR/TRANSPORTER DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Generator/Transporter Defendants pursuant to Sections VII. (Performance of the Work by Settling Generator/Transporter Defendants), VIII. (Remedy Review), IX. (Quality Assurance, Sampling and Data Analysis), and XVII. (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, which disapproval shall not be unreasonably exercised. As of September 20, 1999, Settling Generator/Transporter Defendants submitted to EPA a list of contractors, including the qualifications of each contractor that would be acceptable as a Supervising Contractor to the Settling Generator/Transporter Defendants. On September 30, 1999, EPA provided written notice of the names of any contractor(s) that it disapproved and reasons for such disapproval, and an authorization to proceed with respect to any of the other contractors. Settling Generator/Transporter Defendants may select any contractor from their list that is not disapproved and shall

notify EPA of the name of the contractor selected within 45 days of EPA's authorization to proceed. If at any time thereafter Settling Generator/ Transporter Defendants propose to change a Supervising Contractor, Settling Generator/Transporter Defendants shall give notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Generator/ Transporter Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, the delay shall be deemed a Force Majeure event and shall not subject Settling Defendants to any penalties, stipulated or statutory. Settling Generator/Transporter Defendants shall have the burden of demonstrating that EPA's failure to provide written notice of its authorization to proceed was the predominant cause of Settling Generator/Transporter Defendants' failure to meet the deadline(s) involved.

11. Remedial Design. The Remedial Design for the remedy set forth in the ROD has been completed pursuant to the Remedial Design AOC and was approved by EPA on June 18, 1996. The Remedial Design is incorporated into, and is an enforceable part of, this Consent Decree. Within six months of lodging of the Consent Decree, the Settling Generator/Transporter Defendants may propose modifications to the approved Remedial Design to allow for re-use of the Site by a Prospective Purchaser. Any proposed modifications shall be submitted to EPA for review and approval, in consultation with Ohio EPA, pursuant to Section XIII. Any modifications approved by EPA shall be incorporated into, and made an enforceable part of, this Consent Decree.

## 12. Remedial Action

a. A Remedial Action Work Plan was submitted by Settling Generator/Transporter Defendants as part of the Remedial Design, pursuant to the Remedial Design AOC. The plan provides for the construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards in accordance with this Consent Decree, the ROD, and the Remedial Design.

b. As EPA determines necessary, by January 10, 2000, or within 90 days of the EPA's issuance of its authorization to proceed pursuant to Paragraph 10.a., whichever is later, Settling Generator/Transporter Defendants shall modify, according to the substantive criteria set forth in the Remedial Design SOW, any of the documents submitted as part of the Remedial Design. By January 10, 2000, or within 90 days of EPA's issuance of its authorization to proceed, whichever is later, Settling Generator/Transporter Defendants may propose other modifications, which they deem necessary, to any of the documents submitted as part of the Remedial Design and, by this same date, Settling Generator/Transporter Defendants shall also supplement the Remedial Design so that it includes the following:

1) a revised schedule for developing and submitting required Remedial Action plans and for implementation and completion of all Remedial Action activities;

(2) the initial formulation of the Remedial Action team (including, but not limited to, the Supervising Contractor);

(3) a revised Health and Safety Plan for the Remedial Action; and

(4) the methodology for implementation of the Construction Quality Assurance Plan.

c. By February 1, 2000, or within 110 days of EPA's authorization to proceed, whichever is later, the Settling Generator/Transporter Defendants shall further supplement the Remedial Design so that it includes the following:

- (1) the methodology for implementation of the Operation and Maintenance Plan;
- (2) the methodology for implementation of the Contingency Plan;
- (3) a Construction Quality Control Plan; and
- (4) a plan for evaluating the groundwater elevation underneath the cap (as discussed in subparagraph 13.C.1.).

d. Upon approval of the documents identified in subparagraphs b. and c. above, Settling Generator/Transporter Defendants shall, in compliance with the revised schedule for completion of the Remedial Action activities, as approved by EPA, implement the activities required under the Remedial Action Work Plan. The Settling Generator/Transporter Defendants shall submit all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan, in accordance with the approved revised schedule, to EPA for review and approval, in consultation with the State, pursuant to Section XIII. (EPA Approval of Plans and Other Submissions). Settling Generator/Transporter Defendants have commenced at least one of the following field work activities prior to December 31, 1999, as described more fully in the Remedial Design: Item I, Project Initiation; Item II, Site Utilities; Item V, Monitoring Well Construction; and clearing and grubbing in areas where the cap will be placed, excluding the area where Waste Material was disposed, in accordance with Section 4.4.1 and Section 02100, Part 3.04 of the Remedial Design. With the exception of Item V, Monitoring Well Construction,



Settling Generator/Transporter Defendants shall complete the field work activities listed in the preceding sentence by March 31, 2000.

e. If prior to March 1, 2000: (1) Settling Generator/ Transporter Defendants receive EPA's authorization to commence all remaining field work not required to be initiated prior to December 31, 1999 ("all remaining field work"), and (2) this Consent Decree has been entered by this Court, Settling Generator/Transporter Defendants shall complete all remaining field work such that the Pre-final Inspection may occur by December 31, 2000. If either of the pre-conditions set forth in the preceding sentence is not met by March 1, 2000, Settling Generator/ Transporter Defendants shall submit a revised schedule, for approval by EPA, within 30 days after their receipt of EPA's authorization, or entry of this Consent Decree, whichever is later. The revised schedule shall set a date for the completion of all remaining field work ("Construction Completion Date"), such that the Pre-final Inspection may occur by September 30, 2001. Settling Generator/ Transporter Defendants shall complete the Remedial Action in accordance with the revised schedule approved by EPA.

13. Performance Standards

a. Capping

The cap shall meet the design requirements found in the Remedial Design and the substantive requirements of RCRA Subtitle C. The purpose of the cap is to minimize the infiltration of water from precipitation through the Waste Material beneath the cap. The cap shall comply with any Applicable or Relevant and Appropriate Requirements (ARARs), as set forth in

the ROD or the Remedial Design, and the requirements in 40 C.F.R. § 264.310(a) (1993), including:

(1) provide long-term minimization of migration of liquids through the Waste Material beneath the cap;

(2) function with minimum maintenance;

(3) promote drainage and minimize erosion or abrasion of the cap;

(4) accommodate settling and subsidence so that the integrity of the cap is maintained; and.

(5) have a permeability less than or equal to the permeability of any natural subsoils present.

b. Downgradient Groundwater Control

(1) Settling Generator/Transporter Defendants shall install and operate the groundwater interception system such that all Contaminated Site Groundwater shall be captured in the collection trench, and conveyed to the POTW, or another disposal site, as approved by EPA, or treated as necessary and discharged to the East Fork of Mill Creek.

(2) Site Groundwater discharged to the POTW shall comply with all of the POTW's pretreatment standards. If pre-treatment is needed to meet POTW requirements, Settling Generator/Transporter Defendants shall incorporate technology appropriate to those parameters which are expected to exceed the pre-treatment standards. Such technologies may include, but are not limited to, the following: gravity clarification, filtration, metals precipitation, ion exchange and activated carbon. Pre-treatment standards shall be specified in the final O&M plan.

(3) On a quarterly basis for two years after the completion of construction of the cap and the groundwater interception system, Settling Generator/Transporter Defendants shall monitor the quality of the Site Groundwater at the Points of Compliance for the full range of parameters set forth in Appendix B-2 and shall monitor the elevation and direction of flow of Site Groundwater. If monitoring results indicate that any Contaminated Site Groundwater is not being captured, Settling Generator/Transporter Defendants shall propose, for approval or modification by EPA, in consultation with the State pursuant to Section XIII of this Consent Decree (EPA Approval of Plans and Other Submissions), an appropriate response action that may include modifications and/or extensions to the groundwater interception system, pursuant to the procedures set forth in Paragraph 15. Settling Generator/Transporter Defendants shall implement the appropriate response action as approved or modified by EPA. In addition, during the quarterly monitoring events, the Settling Generator/Transporter Defendants shall monitor the operation of the interception system to detect any conditions that may interfere with the proper operation and function of the interception system.

(4) At any time after the two-year groundwater monitoring period specified in subparagraph 3 above, the Settling Generator/Transporter Defendants may request, in writing, that EPA reduce the sampling frequency, parameters to be analyzed for, and/or the number of sampling locations to be sampled, and/or modify the data quality objectives under which the sampling will be conducted.

c. Upgradient Groundwater Control

(1) The Settling Generator/Transporter Defendants shall prepare a plan for the evaluation of the groundwater elevation underneath the cap and include a methodology to

evaluate whether the Waste Material underneath the cap is in contact with Site Groundwater. This plan shall be submitted within 110 days of EPA's authorization to proceed or by February 1, 2000, whichever is later, pursuant to Paragraph 10.a., for approval by EPA, in consultation with the State, pursuant to Section XIII of this Consent Decree (EPA Approval of Plans and Other Submissions). The plan shall provide for quarterly measurements for two years' subsequent to the completion of the landfill cap of the elevation and direction of Site Groundwater flow, presentation of the data derived from the quarterly sampling events, and a methodology to evaluate whether Waste Material underneath the cap is in contact with Site Groundwater. After approval or modification of this monitoring plan by EPA, the monitoring shall be implemented in conjunction with the quarterly monitoring at the Points of Compliance to assess the groundwater interception system.

(2) After the two-year monitoring period specified in subparagraph (1) above, and based upon quarterly groundwater elevation and direction monitoring results, EPA, in consultation with the Settling Generator/Transporter Defendants and the State, will determine whether the elevation of the groundwater is below the Waste Material underneath the cap so the Waste Material is not in contact with Site Groundwater. If EPA determines that the elevation of the groundwater is below the Waste Material, or, based on trends, is expected to fall below the Waste Material underneath the cap within three years of the completion of the two year monitoring period specified in subparagraph (1) above, then it will be unnecessary for the Settling Generator/Transporter Defendants to construct the upgradient groundwater control system. If EPA determines that Site Groundwater is in contact with the Waste Material underneath the cap and may reasonably be expected to remain in contact with the Waste Material for more than three

years after the completion of the two year monitoring period specified in subparagraph (1) above, Settling Generator/Transporter Defendants shall, within 60 days of EPA's determination or some other longer time period agreed to by EPA, submit to EPA a plan and schedule to construct the upgradient groundwater control. If, based on the data, EPA is unable to make a determination regarding whether the Site Groundwater is in contact with the Waste Material underneath the cap and is expected to remain in contact with the Waste Material for more than three years after the completion of the two year monitoring period specified in subparagraph (1) above, the Settling Generator/Transporter Defendants shall continue to monitor the elevation of the groundwater beneath the cap for another year, at which time EPA will make a final determination regarding whether Site Groundwater is in contact with and may reasonably be expected to remain in contact with Waste Material underneath the cap. If EPA's final determination is that Site Groundwater is in contact with the Waste Material underneath the cap and may reasonably be expected to remain in contact with the Waste Material for more than two years after the completion of the additional one-year monitoring period specified in the preceding sentence, Settling Generator/Transporter Defendants shall, within 60 days of EPA's determination or some other longer time period agreed to by EPA, submit to EPA, for the Agency's review and approval, pursuant to Section XIII of this Consent Decree (EPA Approval of Plans and Other Submissions), a plan for the upgradient groundwater control and a construction schedule for implementation of the EPA-approved plan.

(3) Upon an EPA determination that the criteria for the construction of the upgradient groundwater control are met, then Settling Generator/Transporter Defendants shall construct the upgradient groundwater control in compliance with the EPA-approved plan and construction schedule.

d. O & M Groundwater Monitoring

(1) Settling Generator/Transporter Defendants shall continue to capture, treat, if necessary to meet any applicable or, if on-Site, any applicable or relevant and appropriate discharge requirements, and discharge Contaminated Site Groundwater for 30 years following the Certification of Completion of the Remedial Action (CCRA), pursuant to Paragraph 56.b. of this Consent Decree. During this 30-year period, Settling Generator/Transporter Defendants shall monitor the groundwater at the Points of Compliance, pursuant to the Long-Term Performance Plan in the Remedial Design. If required by EPA, the Settling Generator/Transporter Defendants shall modify the Long-Term Performance Plan to address any changes in site conditions, to ensure that all Contaminated Site Groundwater is being captured. This monitoring will determine whether any off-site migration of Contaminated Site Groundwater is occurring.

(2) At any time prior to or during the 30 year period following issuance of the CCRA, the Settling Generator/Transporter Defendants may petition EPA to cease discharge of the Site Groundwater to the POTW and to discharge the groundwater to the East Fork" of Mill Creek or another disposal site instead. If Settling Generator/Transporter Defendants propose to dispose of Contaminated Site Groundwater at an alternate disposal location, or discharge it, after any necessary treatment, to the East Fork of Mill Creek, they shall request and obtain the approval of EPA. Any off-Site alternate disposal location must comply with the off-site rule, 40 CFR 300.440, and any off-site discharge must meet applicable surface water discharge requirements. Any on-Site alternate disposal location must meet applicable or relevant and appropriate substantive discharge requirements.

(3) At any time during the 30 year period following issuance of the CCRA, in the event that any of the parameters set forth in Appendix B-2 are detected at concentrations above the Revised Modified Trigger Levels at the Points of Compliance, Settling Generator/Transporter Defendants shall notify EPA and take immediate action pursuant to the approved O & M Plan, or if not addressed by the approved O & M Plan, pursuant to Paragraph 58 of this Consent Decree, to evaluate and, if required by the approved O&M plan or Paragraph 58 (Emergency Response) of this Consent Decree, remedy the situation. If monitoring results indicate that not all Contaminated Site Groundwater is being captured by the interception system, Settling Generator/Transporter Defendants shall re-evaluate the interception system and shall modify the system, as approved by EPA, according to the provisions set forth in Paragraph 15.

14. Operation and Maintenance

a. Within 60 days prior to the scheduled completion of the cap, Settling Generator/Transporter Defendants shall submit to EPA for review and approval, in consultation with the State, an O&M Plan. The O&M Plan shall include, at a minimum, a description of those elements necessary to ensure the long-term integrity of the Remedial Action. The O&M plan shall include the following elements: a description of normal operation and maintenance; a description of potential operating problems; a description of routine monitoring and laboratory testing; a contingency plan; a safety plan; a description of equipment; and records and reporting mechanisms required. EPA review and approval of the O&M Plan shall be pursuant to Section XIII (EPA Approval of Plans and Other Submissions).

b. Settling Generator/Transporter Defendants shall implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

15. Modification of the Remedial Design or Related Work Plans.

a. If EPA determines that modification to the Work specified in the Remedial Design and/or in work plans developed pursuant to the Remedial Design is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated into the Remedial Design and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 15 (a) and Paragraphs 56 and 57 only, the "scope of the remedy selected in the ROD" includes: construction of a RCRA-equivalent cap over the former dump area and the buried waste lagoon; consolidation of Waste Material and contaminated soils from the buried pit and areas near BP-01/BP-02 and GW-38 (as delineated in the Remedial Design); interception, collection, and treatment of Contaminated Site Groundwater; diversion of upgradient groundwater flow if required under Paragraph 13.C.3; monitoring (1) Site Groundwater at the Points of Compliance, (2) surface waters in the East Fork of Mill Creek, (3) direction and elevation of Site Groundwater, and (4) Site Groundwater for potential DNAPL contamination; and institutional controls to limit future use of the Site and exposure of humans to contamination where remedial construction has occurred.



c. If Settling Generator/Transporter Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXV (Dispute Resolution), Paragraph 103. The Remedial Design and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Generator/Transporter Defendants shall implement any Work required by any modifications incorporated into the Remedial Design and/or into work plans developed pursuant to the Remedial Design in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit any authority that EPA may have to require performance of further response actions as otherwise provided in this Consent Decree. Nothing in this Paragraph shall be construed to limit any right that Settling Generator/Transporter Defendants may have to object to and defend against EPA's exercise of such authority.

16. Settling Generator/Transporter Defendants acknowledge and agree that nothing in this Consent Decree, the Remedial Design, or the Remedial Action Work Plan constitutes a warranty or representation of any kind by EPA that compliance with the work requirements set forth in the Remedial Design and the Work Plan will achieve the Performance Standards.

17. Prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, Settling Generator/Transporter Defendants shall provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Generator/Transporter Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Generator/Transporter Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Generator/Transporter Defendants following the award of the contract for Remedial Action construction. The Settling Generator/Transporter Defendants shall provide the information required by Paragraph 17.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

18. Upon the lodging of this Consent Decree, the obligations of the Respondents of the UAO captioned, In The Matter Of: Skinner Landfill Superfund Site; Butler County, Ohio, dated December 9, 1992, shall be deemed suspended until the entry of the Consent Decree. Upon the entry of this Consent Decree, the obligations of the Respondents of the UAO will be deemed satisfied.

#### VIII. REMEDY REVIEW

19. Periodic Review. Settling Generator/Transporter Defendants shall conduct any studies and investigations as requested by EPA that are reasonably necessary to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121 (c) of CERCLA and any

applicable regulations. Copies of the studies and any reports, proposals, documents or items required by EPA shall be submitted by the Settling Generator/Transporter Defendant(s) to EPA for approval under Section XIII.

20. a. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of this Consent Decree, CERCLA, and the NCP.

b. Opportunity To Comment. Settling Generator/Transporter Defendants and Settling Owner/Operator Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on EPA's determination that the Remedial Action is not protective of human health and the environment and on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121 (c) of CERCLA and to submit written comments for the record during the comment period.

21. Settling Generator/Transporter Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Generator/Transporter Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 122 or Paragraphs 123 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Generator/Transporter Defendants may invoke the procedures set forth in Section XXV (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 122 or Paragraph 123 of Section XXVII. (Covenants by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response

actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 103 (record review).

22. Submissions of Plans. If Settling Generator/Transporter Defendants are required to perform further response actions pursuant to Paragraph 21, they shall submit a plan for such work to EPA for approval in accordance with the provisions of this Decree.

#### IX. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

23. Settling Generator/Transporter Defendants shall use quality assurance, quality control, and chain of custody, procedures for all compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087)), and subsequent amendments to such guidelines upon notification by EPA to Settling Generator/Transporter Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Generator/Transporter Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the Remedial Design, the NCP and applicable guidance documents. If relevant to a proceeding between the Parties, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Generator/Transporter Defendants shall, by contract, require that all laboratories utilized by Settling Generator/Transporter Defendants in implementing this Consent Decree, grant access at reasonable times to EPA and State personnel and their authorized representatives. In addition,

Settling Generator/Transporter Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Generator/Transporter Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Generator/Transporter Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Generator/Transporter Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

24. Upon request, the Settling Generator/Transporter Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Generator/Transporter Defendants shall notify EPA not less than 14 (fourteen) days in advance of any sample collection activity unless shorter notice is agreed to by EPA, which consent shall not be unreasonably withheld. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. EPA shall notify Settling Generator/Transporter Defendants not less than 14 (fourteen) days in advance of any sampling to be conducted by the Agency. Upon request, EPA shall allow the Settling Generator/Transporter Defendants to take split or duplicate samples

of any samples taken as part of the Plaintiffs oversight of the Settling Generator/Transporter Defendant's implementation of the Work or as related to a prospective purchaser agreement.

25. Settling Generator/Transporter Defendants shall submit to EPA copies of the results of all QA/QC sampling results and/or tests or other data obtained or generated by or on behalf of Settling Generator/Transporter Defendants with respect to the implementation of this Consent Decree unless EPA agrees otherwise. Upon request, Settling Generator/Transporter Defendants shall provide to EPA the results of sampling and/or tests or other data obtained or generated by or on their behalf, prior to the data, tests or results being verified by QA/QC procedures.

26. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related to such information gathering and inspection authorities, under CERCLA, RCRA and any other applicable statutes or regulations.

#### X. ACCESS AND INSTITUTIONAL CONTROLS

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and its contractors, Settling Generator/Transporter Defendants, and any Prospective Purchaser presented by EPA or Optionee,

with access at all reasonable times to the Site, or such other property for the purpose of conducting any activity related to this Consent Decree or the purchase of the Site, including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to this Consent Decree;
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXXI (Access to Information);
- (8) Assessing Settling Defendants' compliance with this Consent Decree;
- (9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree; and
- (10) Surveying and making soil tests of the Site, locating utility lines, and assessing the obligations which may be required of a Prospective Purchaser by EPA under this Consent Decree.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, drilling, digging, building, or the installation, construction, removal, or use of any buildings, wells, pipes, roads, ditches or any

other structures on the capped area and areas of the Site that are required to implement the Remedial Action and the requirements in this Consent Decree;

c. commencing on the date of lodging of this Consent Decree, refrain from bringing, and refuse to grant permission to any other person to bring Waste Materials or Scrap Metal onto the Site except in accordance with any federal, state, or local permit or this Consent Decree.

d. within 15 days of EPA's approval of a draft easement under this Paragraph, execute and record in the Recorder's Office of Butler County, State of Ohio, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27. b. and c. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA, (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Generator/Transporter Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 15 days of any request by EPA under this Consent Decree, submit to EPA for review and approval with respect to such property.

(1) A draft easement, in substantially the form attached hereto as Appendix C-3, that is enforceable under the laws of the State of Ohio, free and clear of all



prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) A current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards"). Within 30 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office of Butler County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Generator/Transporter Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Generator/Transporter Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a. of this Consent Decree;

b. an agreement, enforceable by the Settling Generator/Transporter Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 27.b. of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. if EPA so requests, the execution and recording in the Recorder's Office of Butler County, State of Ohio, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27.b and c. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Generator/Transporter Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of any request by EPA pursuant to this Paragraph, Settling Generator/Transporter Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement, incorporating the land use restrictions set forth in Appendix C-3, that is enforceable under the laws of the State of Ohio, free and clear of all prior liens and encumbrances (except as approved by EPA), and

acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) A current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

29. Within 30 days of EPA's approval and acceptance of the easement identified in the preceding Paragraph, Settling Generator/Transporter Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office of Butler County. Within 30 days of the recording of the easement, Settling Generator/Transporter Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

30. For purposes of Paragraph 28, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. With respect to any property owned or otherwise controlled by the Site owners or operators, past, present, or future, Settling Generator/Transporter Defendants' best efforts shall not require the payment of sums of money in consideration of access or in consideration of use or restrictive easements.

31. If any access or land/water use restriction agreements or easement required by Paragraphs 28.a. or 28.b. of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 28.c. of this Consent Decree are not submitted to EPA in draft form within 45 days of

EPA's request for such easements, Settling Generator/Transporter Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Generator/Transporter Defendants have taken to attempt to comply with Paragraph 28 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Generator/Transporter Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Generator/Transporter Defendants shall reimburse the United States in accordance with the procedures in Section XVIII. (Reimbursement of Response Costs By Settling Generator/Transporter Defendants), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

32. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the Work, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Generator/Transporter Defendants and Settling Owner/Operator Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

33. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. SETTling OWNER/OPERATOR DEFENDANTS' OBLIGATIONS WITH  
REGARD TO THE TRANSFER OF REAL PROPERTY INTERESTS IN THE SITE

34. Limitations on Ability to Transfer Property; Notice to Successors-in-Title

a. Settling Owner/Operator Defendants agree not to transfer any real property interest at the Site, other than a utility or public access easement, without the advance approval of EPA and as provided in Paragraph 35 of this Section. At least 60 days prior to any proposed conveyance, the Settling Owner Defendant(s) seeking to convey the interest shall also give written notice to EPA, the Optionee, the Settling Generator/Transporter Defendants, and the State of the proposed conveyance, including the name and address of the grantee or Prospective Purchaser, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the Prospective Purchaser or grantee pursuant to Subparagraph b. of this Paragraph. Settling Owner/Operator Defendants also agree to subject any conveyed interest in real property that is located within the Site, including any utility or public access easements, to the access and restrictive easements set forth in Section X (Access and Institutional Controls) of this Consent Decree. Additionally, Settling Owner/Operator Defendants agree to subject any conveyed interest in real property that is located within the Site to any conditions imposed by EPA upon the use of the land which are designed to protect the integrity of the remedial action at the Site, or to otherwise protect human health and the environment. The proceeds of any transfers of the Site to which EPA consents under this Paragraph, in excess of the Option Price as defined by Paragraph 36.b., shall be paid to the Skinner Landfill Special Account, within the Hazardous Substance Superfund, in accordance with Section XXI (Procedures for the Reimbursement of Response Costs).

b. With respect to any property owned or controlled by the Settling Owner/  
• Operator Defendants that is located within the Site, within 15 days after the entry of this Consent

Decree, the Settling Owner/Operator Defendants shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Butler County, State of Ohio, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on June 4, 1993, that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy and that the Settling Owner/Operator Defendants have granted an option to OXY USA to purchase the Site as provided in Paragraph 36 of this Consent Decree.

c. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Owner/Operator Defendants shall record the notice within 10 days of EPA's approval of the notice. The Settling Owner/Operator Defendants shall provide EPA and the Settling Generator/Transporter Defendants with a certified copy of the recorded notice within 10 days of recording such notice.

35. a. Upon submittal of the request for approval to transfer any interest in property located within the Site to EPA, and at least 30 days prior to the conveyance of any such interest including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Owner/Operator Defendants conveying the interest shall give the Prospective Purchaser or grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section X (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on

the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section X (Access and Institutional Controls).

b. In the event of any such conveyance, the Settling Owner/Operator Defendants' obligations under this Consent Decree, including, but not limited to, their obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section X (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Owner/Operator Defendants. In no event shall the conveyance release or otherwise affect the liability of the Settling Owner/Operator Defendants to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the Prospective Purchaser may perform some or all of the Work under this Consent Decree, in accordance with a separate Prospective Purchaser Agreement to be entered into collectively by the United States, the Settling Generator/Transporter Defendants, and the Prospective Purchaser.

36. Grant of Option to Acquire Site to Optionee:

a. As a supplement to and not in limitation of the rights granted to EPA and the Settling Generator/Transporter Defendants under Paragraphs 34 and 35 of this Consent Decree and in consideration of the payment of \$5,000.00 (the "Option Consideration") by the Settling Generator/Transporter Defendants to the Settling Owner/Operator Defendants which shall be paid within 30 days after the effective date of this Consent Decree, the receipt and adequacy of which consideration is hereby acknowledged, Settling Owner/Operator Defendants grant to Optionee for the purpose herein provided, the exclusive right at its option to purchase the Site, or any part thereof, together with all improvements thereon, and all rights, easements and

appurtenances thereto (such right as it pertains to all or a part of the Site, is hereafter called the "Option") from time to time and at any time prior to January 1, 2015. Optionee may exercise the Option as to all or a part of the Site by written notice to Settling Owner/Operator Defendants and may assign the Option as to all or a part of the Site (in which event the Option shall be partially assignable) by written notice to Settling Owner/Operator Defendants. Notice of the exercise of this Option, if given in the manner provided for the delivery of notices under this Consent Decree, shall be deemed sufficiently given for all purposes.

b. If the Option is exercised, the Settling Owner/Operator Defendants shall convey title to the Site or portion thereof as to which the Option is exercised, on the following terms:

(i) The purchase price ("Option Price") for the entire Site, shall be the greater of \$50,000.00 or 5% of: (A) the Net Sale Proceeds received by Optionee as consideration for an assignment of the exercised or unexercised Option to purchase the Site to a Prospective Purchaser; or (B) if Optionee or its nominee takes title to the Site, the Net Sale Proceeds received by Optionee upon the substantially simultaneous sale of the Site to a Prospective Purchaser. If this Option is exercised for less than the entire Site, the minimum Option Price for such portion of the Site shall be a pro-rata share of the minimum Option Price set forth in the preceding sentence in the proportion that the area of the portion of the Site as to which the Option is exercised bears to the entire area of the Site prior to any exercise of the Option, except that the minimum Option Price for any parcel which includes all of the frontage of the Site on Cincinnati-Dayton Road shall be \$15,000.00.

(ii) For purposes of computation of the Option Price, the term "Net Sale Proceeds" shall mean the cash proceeds received by the Optionee after payment of all costs incurred in



connection with its sale of the Site (or a portion thereof) or received by the Optionee in connection with its full or partial assignment of the Option to a Prospective Purchaser, including, but not limited to, (A) real estate tax prorations, (B) the pay-off of mortgages existing on July 23, 1999, (C) realtor's commissions, (D) attorneys' fees incurred by Optionee in connection with the listing agreement, sale contract and closing, (E) transfer taxes and fees, (F) title the search, insurance and closing fees and premiums of title insurers and (G) survey costs, if any. Any mortgage or any consensual or nonconsensual liens encumbering the Site and granted or suffered by Settling Owner/Operator Defendants after July 23, 1999 shall be paid by Settling Owner/Operator Defendants upon transfer of title to the Site (or a portion thereof) pursuant to the Option (the "Closing") and shall not be considered in the computation of Net Sale Proceeds. The Option Consideration shall be credited against the Option Price at the Closing. Payment of the Option Price to the Settling Owner/Operator Defendants shall be made from the Net Sale Proceeds received by Optionee at the time of or promptly after receipt thereof.

(iii) The balance of Net Sale Proceeds after payment of the Option Price shall be paid by the Party receiving these proceeds to the Skinner Landfill Special Account within the Hazardous Substance Superfund in accordance with Section XXII of this Consent Decree.

(iv) If the Option is exercised as to only a part of the Site, it shall remain in effect with respect to the remainder of the Site as to which the Option has not been exercised.

(v) Within thirty (30) days after exercise of the Option, Settling Owner/Operator Defendants shall convey marketable and insurable fee simple title to the Site, or any part thereof as to which the Option has been exercised, to the Optionee or the Optionee's assignee or designee, by transferable and recordable general warranty deed, with waiver of dower where required, free,

clear and unencumbered except for charges against the Site that may be satisfied from Closing proceeds, the terms of this Consent Decree (including any easements or restrictions required thereunder), other matters acceptable to the Prospective Purchaser and the lien of real property taxes and installments of assessments. Any spouses of Settling Owner/Operator Defendants identified as such on Appendix E, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, have executed this Consent Decree for the purpose of stating such spouses' agreement to join in the conveyance of the Site, or any part thereof, upon any exercise of the Option.

(vi) Settling Owner/Operator Defendants shall do all things necessary or appropriate to cooperate with all holders of the Option (or any part thereof) by signing or otherwise supporting any and all zoning and other land use and subdivision approval requests, so long as the Prospective Purchaser pays any out-of-pocket expenses for the same.

(vii) To the extent that the Option is not exercised prior to January 1, 2015, thereafter it shall be void and of no further force or effect. This Option shall be binding upon and shall inure to the benefit of the Settling Owner/Operator Defendants, and Optionee, and their respective heirs, personal representatives, successors and assigns.

(viii) Optionee is authorized to seek purchasers for the Site, or any part thereof, upon terms deemed by Optionee to be advantageous. Before accepting any proposals for the purchase of the Site, or any part thereof, from any Prospective Purchaser and assigning or exercising the Option with respect thereto Optionee shall obtain the written approval of EPA, by complying with the requirements set forth in Paragraph 39 of this Section.

(ix) The Option may be exercised only for the purpose of and in connection with a sale of the Site, or any part thereof, to a Prospective Purchaser for the purpose of reuse of the Site.

37. Within 60 days after this Consent Decree has been recorded in the Recorder's Office, in Butler County, Ohio, EPA shall file a Release of Notice of Federal Lien in the Recorder's Office, Butler County, State of Ohio. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on November 14, 1990, Lien# 38360, Book 56, Page 371, and shall not release any other lien or encumbrance which may exist upon the Property; provided, however, that the Release of Notice of Federal Lien shall be effective only as to the Site, and shall not serve as a release of any CERCLA liability that might be asserted by EPA or other potentially responsible parties against any heir of the Settling Owner/Operator Defendants or any successor in interest who acquires an interest in the Site. The extent to which this Consent Decree may limit Settling Owner/Operator Defendants' CERCLA liability for the Site are set forth in Section XXVII (Covenants By Plaintiff With Respect To Non-De Minimis Parties) and Section XXIX (Covenants by Settling Defendants, Settling De Minimis Defendants, Settling Federal Agencies, and Settling De Minimis Federal Agencies).

38. Notwithstanding the preceding provisions of Paragraph 36 of this Section, if Optionee receives a written offer for the purchase of all or any part of the Site and Optionee has obtained all approvals required for it to accept such offer and to assign or exercise the Option with respect to the Site or portion thereof which is the subject of such offer, Optionee shall deliver a copy of such offer or its notice of intent to exercise the option to Settling Owner/ Operator Defendants ("Optionee's Notice"). Provided that it has complied with the requirements of Paragraph 39 of this Section (EPA's Authority With Regard to a Proposal for Site Re-Use),

Optionee may proceed with the assignment or exercise of the Option unless it receives written notice from Settling Owner/Operator Defendants within 15 days following the date of delivery of Optionee's Notice, stating that, Settling Owner/Operator Defendants elect to terminate the Option ("Notice of Election to Terminate Option") with respect to the Site or portion thereof covered by Optionee's Notice. If Settling Owner/Operator Defendants elect to terminate the option, they shall pay to Optionee the purchase price set forth in Optionee's Notice, less the Option Price that would be received by Settling Owner/Operator Defendants under Paragraph 36. The Notice of Election to Terminate Option shall be accompanied by a payment equal to 10% of the purchase price as set forth in Optionee's Notice. The Election to Terminate Option shall be accomplished by Settling Owner/Operator Defendants' payment of the balance of the purchase price within 15 days thereafter. Upon receiving full payment for such termination of the Option, Optionee will execute and deliver to the Settling Owner/Operator Defendants a release of the Option as to all or the relevant portion of the Site. Optionee shall pay the net amount it receives from Settling Owner/Operator Defendants for release of the Option, after payment of the costs which Optionee has incurred with respect to the proposed sale which was the subject of the Optionee's Notice and which would have been deducted from the purchase price under Paragraph 36 (b)(ii) if Settling Owner/Operator Defendants had not terminated the Option, to the Skinner Landfill Special Account within the Hazardous Substance Superfund in accordance with Sections XXI and XXII of this Consent Decree.

39. EPA's Authority With Regard to a Proposal for Site Re-Use.

a. In the event that the Settling Owner/Operator Defendants propose to sell all or a portion of the Site, or the Optionee proposes to exercise all or a portion of the Option, and the sale or exercise of the option reasonably could involve the potential for re-use of the Site, the procedures set forth in this Paragraph shall be followed. The party proposing the plan for re-use, whether the Settling Owner/Operator Defendants, the Optionee, a Prospective Purchaser, or any other party, shall deliver a request for approval in writing to EPA, accompanied by a copy of the plan for re-use of the Site along with any agreements with any Parties to this Consent Decree that relate to the transfer of any real property interests at the Site and any plan for re-use. These documents shall be sent to EPA and the State in the manner provided by Section XXXIV. (Notices and Submissions) of this Consent Decree.

b. EPA may review the plan for re-use, in consultation with the State, pursuant to the provisions set forth in Section XIII (EPA Approval of Plans And Other Submissions) of this Consent Decree, and may approve, disapprove, approve upon conditions, or modify or require that modifications be made to the plan. EPA may also impose any restrictions upon the re-use of the Site that it determines are necessary to protect human health or the environment or to protect the integrity of the Remedial Action. Any Party to this Consent Decree may challenge EPA's action(s) regarding the plan for re-use or dispute EPA's determination that restrictions on re-use are necessary to protect human health or the environment or to protect the integrity of the Remedial Action under the provisions of Section XXV (Dispute Resolution) of this Consent Decree, under the standards of Paragraph 103 (Arbitrary and capricious standard) of that Section.

## XII. REPORTING REQUIREMENTS

40. In addition to any other requirement of this Consent Decree, Settling Generator/Transporter Defendants shall submit to EPA and the State copies of written progress reports. Progress reports shall be submitted monthly prior to the Certification of Completion of Remedial Action and quarterly during the O&M Period and shall: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the reporting period; (b) include a summary of all results of QA/QC sampling and tests and all other data received or generated by Settling Generator/Transporter Defendants or their contractors or agents during the reporting period in connection with Work performed under this Consent Decree ; (c) with regard to any sampling that is not conducted pursuant to the requirements of this Consent Decree, describe, generally, the nature of the sampling which was conducted or is to be conducted, and identify the environmental media which was or is to be sampled, (d) identify all work plans, plans and other deliverables required by this Consent Decree which were completed and submitted during the reporting period; (e) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks (prior to the Certification of Completion of Remedial Action) or for the next quarter (during the O&M period) and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (f) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (g) include any modifications to the work plans or other schedules that Settling Generator/Transporter Defendants have proposed to EPA or that have been approved by EPA; and (h) describe all activities undertaken in support of the Community Relations Plan

during the reporting period and those to be undertaken in the next six weeks (prior to the Certification of Completion of Remedial Action) or for the next quarter (during the O&M period). Settling Generator/Transporter Defendants shall submit these progress reports to EPA and the State by the tenth day of the month subsequent to the end of the reporting period, beginning with the month following the lodging of this Consent Decree until EPA provides the Settling Generator/Transporter Defendants with a certification pursuant to Paragraph 57.b. of Section XVI. (Certification of Completion of the Work). Upon EPA's request, Settling Generator/Transporter Defendants shall submit the results of any sampling at the Site not conducted pursuant to the requirements under this Consent Decree, provided that such reporting shall not be considered a report for the purposes of Section XXVI (Stipulated Penalties) of this Consent Decree. If requested by EPA, Settling Generator/Transporter Defendants shall also provide briefings for EPA to discuss the progress of the Work.

41. The Settling Generator/Transporter Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, within seven days prior to the performance of the activity. In the event that the reason giving rise for the change in the schedule occurs less than 7 days prior to the performance of the activity, Settling Generator/Transporter Defendants shall notify EPA verbally or in writing within 72 hours.

42. Upon the occurrence of any event during performance of the Work that Settling Generator/Transporter Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), Settling Generator/Transporter Defendants shall, within 48 hours of the on-set of such event, orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the

unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region V, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

43. Within 20 days of the onset of such an event, Settling Generator/Transporter Defendants shall furnish to EPA a written report, signed by the Settling Generator/Transporter Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Generator/Transporter Defendants shall submit a report to EPA setting forth all actions taken in response thereto. Settling Generator/Transporter Defendants shall simultaneously submit a copy of the reports to the State.

44. Settling Generator/Transporter Defendants shall submit 3 copies of all plans, reports, and data required by the Remedial Design, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Generator/Transporter Defendants shall simultaneously submit 3 copies of all such plans, reports and data to the State.

45. All reports and other documents submitted by Settling Generator/Transporter Defendants to EPA (other than the monthly and quarterly progress reports referred to above) which purport to document Settling Generator/Transporter Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Generator/Transporter Defendants.



### XIII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

46. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Generator/Transporter Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify^ submission without first providing Settling Generator/Transporter Defendants at least one notice of deficiency and an opportunity to cure within 21 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

47. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 46 (a), (b), or (c), Settling Generator/Transporter Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXV. (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission itself or disapproves the submission and directs its modification, and the re-submission submitted by Settling Generator/Transporter Defendants contains the same or substantially the same material defect, EPA retains the right to seek stipulated penalties as provided in Section XXVI (Stipulated Penalties).

48. a. Upon receipt of a notice of disapproval pursuant to Paragraph 46 (d), Settling Generator/Transporter Defendants shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies identified by EPA and resubmit the plan, report, or other

item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXVI, shall accrue during the 21-day period or otherwise specified period, but shall not be payable unless the re-submission is disapproved or modified due to a material defect as provided in Paragraphs 46 and 47.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 46 (d), Settling Generator/Transporter Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Generator/Transporter Defendants of any liability for stipulated penalties under Section XXVI. (Stipulated Penalties).

49. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Generator/Transporter Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Generator/Transporter Defendants shall implement any such plan, report, or other item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XXV (Dispute Resolution).

50. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Generator/Transporter Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Generator/Transporter Defendants invoke the dispute resolution procedures set forth in Section XXV (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXV (Dispute Resolution) and Section XXVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for

such violation from the date on which the initial submission was originally required, as provided in Section XXVI.

51. All plans, reports, and other items (or portion of a plan, report or other item) required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree, until any reversal of the EPA modifications pursuant to a dispute resolution process invoked by the Settling Generator/Transporter Defendants, pursuant to Section XXV of this Decree, but only to the extent that the modifications are reversed pursuant to such a dispute resolution process.

#### XIV. PROJECT COORDINATORS

52. Within 20 days of lodging this Consent Decree, Settling Generator/Transporter Defendants, and EPA will notify each other, in writing, of the name, address, electronic mail address, and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Generator/Transporter Defendants' Project Coordinator shall be subject to disapproval by EPA, which disapproval shall not be unreasonably exercised, and the Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Generator/Transporter Defendants' Project Coordinator shall not be an attorney for any of the Settling Generator/Transporter Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

53. EPA may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

54. EPA's Project Coordinator and the Settling Generator/Transporter Defendants' Project Coordinator will confer, at a minimum, on a monthly basis.

#### XV. ASSURANCE OF ABILITY TO COMPLETE WORK

55. Within 30 days of entry of this Consent Decree, Settling Generator/Transporter Defendants shall submit to EPA, pursuant to Section XXXIV. (Notices and Submissions), annual reports of each of the Settling Generator/Transporter Defendants which are publically-traded on the New York Stock Exchange. Until the United States has issued a Certification of Completion of the Remedial Action pursuant to Paragraph 56, each of the publically-traded Settling Generator/Transporter Defendants shall continue to submit an annual report for the corresponding year each year on the anniversary date of the entry of this Consent Decree.

#### XVI. CERTIFICATION OF COMPLETION

56. Completion of the Remedial Action

a. Within 90 days after Settling Generator/ Transporter Defendants conclude that the Remedial Action has been fully performed and the Performance Standards set forth in subparagraph c. of this Paragraph have been attained, Settling Generator/Transporter Defendants shall schedule and conduct a pre-certification inspection, to be attended by Settling Generator/Transporter Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Generator/Transporter Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a report, the Remedial Action Completion Report, and a request for certification to EPA for approval, with a copy to the State, pursuant to Section XIII (EPA Approval of Plans and Other Submissions). In the Remedial Action Completion Report, a registered professional engineer and the Settling Generator/Transporter Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The Remedial Action Completion Report shall include as-built drawings signed and stamped by a professional engineer. The Remedial Action Completion Report shall contain the following statement, signed by a responsible corporate official of a Settling Generator/Transporter Defendant or the Settling Generator/Transporter Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the Remedial Action Completion Report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved,

EPA will notify Settling Generator/Transporter Defendants in writing of the activities that must be undertaken by Settling Generator/Transporter Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Generator/Transporter Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 15.b. EPA will set forth in the notice a schedule for performance of such activities or require the Settling Generator/Transporter Defendants to submit a schedule to EPA for approval pursuant to Section XIII (EPA Approval of Plans and Other Submissions). Settling Generator/Transporter Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXV. (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent Remedial Action Completion Report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Generator/Transporter Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXVII (Covenants by Plaintiff With Respect To Non-De Minimis Parties). Certification of Completion of the Remedial Action shall not affect Settling Generator/Transporter Defendants' other obligations under this Consent Decree.

c. Performance Standards for Certification of Completion of Remedial Action

Settling Generator/Transporter Defendants will have met the Performance Standards for purposes of this Paragraph if: (1) The landfill cap meets the Performance Standards set forth in Paragraph 13.a., (2) The groundwater interception system is capturing all Contaminated Site Groundwater, and, (3) It is unnecessary pursuant to Paragraph 13.c. for the Settling Generator/Transporter Defendants to construct the upgradient ground water control system or after EPA has determined that the upgradient groundwater control system has been constructed in accordance with the EPA approved plan.

57. Completion of the Work

a. Within 90 days after Settling Generator/Transporter Defendants conclude that all phases of the Work (including thirty years of O & M) have been fully performed, Settling Generator/Transporter Defendants shall schedule and conduct a pre-certification inspection, to be attended by Settling Generator/Transporter Defendants, EPA and the State. If, after the pre-certification inspection, the Settling Generator/Transporter Defendants still believe that the Work has been fully performed, Settling Generator/Transporter Defendants shall submit a report, the Completion of Work Report, by a registered professional engineer, stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The Completion of Work Report shall contain the following statement, signed by a responsible corporate official of a Settling Generator/Transporter Defendant or the Settling Generator/Transporter Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the Completion of Work Report, EPA, after a reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Generator/Transporter Defendants in writing of the activities that must be undertaken by Settling Generator/Transporter Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Generator/Transporter Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 15.b. EPA will set forth in the notice a schedule for performance of such activities or require the Settling Generator/Transporter Defendants to submit a schedule to EPA for approval pursuant to Section XIII (EPA Approval of Plans and Other Submissions). Settling Generator/Transporter Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XXV. (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Generator/Transporter Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so certify in writing to the Settling Generator/Transporter Defendants. This certification shall constitute the Certification of Completion of the Work for purposes of this Consent Decree, including, but not limited to, Section XXVII (Covenants by Plaintiff With Respect To Non-De Minimis Parties).



## XVII. EMERGENCY RESPONSE

58. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Generator/Transporter Defendants shall, subject to Paragraph 59, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Generator/Transporter Defendants shall notify the EPA Emergency Response Section, Region V. Settling Generator/Transporter Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the Remedial Design. In the event that Settling Generator/Transporter Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Generator/Transporter Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Sections XVIII (Reimbursement of Response Costs By Settling Generator/Transporter Defendants).

59. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section

XXVII (Covenants by Plaintiff With Respect To Non-De Minimis Parties). Nothing in this Paragraph shall be construed to limit any right that Settling Generator/Transporter Defendants may have to object to EPA's exercise of such authority.

XVIII. REIMBURSEMENT OF RESPONSE COSTS BY SETTling  
GENERATOR/TRANSPORTER DEFENDANTS

60. The United States has agreed to compromise a portion of its claim for Past Response Costs. This compromise of Past Response Costs is equal to \$517,601.72. The United States has agreed to compromise an additional portion of its claim for Past Response Costs in the form of Fixed Orphan Share Compensation, and Conditional Orphan Share Compensation. The Fixed Orphan Share Compensation is equal to \$2.6 million, and is based upon \$10.5 million, the 1999 estimated cost of conducting the Work, if certain remedial contingencies prove unnecessary. The Conditional Orphan Share Compensation is equal to \$800,000, and is based upon \$ 4.887 million, the 1999 estimated cost of conducting the remedial contingencies specified in Appendix H ("the 1999 Contingencies Cost Estimate").

61. Within 90 days after the Settling Generator/Transporter Defendants receive EPA's final report of the results of the first 5 year review, Settling Generator/Transporter Defendants shall submit to EPA a revised written estimate, in constant dollars, of the actual and projected costs for the remedial contingencies specified in Appendix H (the "Revised Remedial Contingencies Cost Estimate"). EPA has the authority to review the Revised Remedial Contingencies Cost Estimate submitted by the Settling Generator/Transporter Defendants. If EPA finds that the Settling Generator/Transporter Defendants' Revised Remedial Contingencies Cost Estimate includes an accounting error or a cost not attributable to the costs of completing the Work, EPA will adjust the revised cost estimate accordingly. The costs set forth in Paragraph 86

of Section XXII (Creation and Use of Skinner Special Account) are excluded from the Revised Remedial Contingencies Cost Estimate. Settling Generator/Transporter Defendants reserve the right to dispute any adjustment that EPA makes to the Revised Remedial Contingencies Cost Estimate pursuant to the dispute resolution provisions of this Consent Decree.

62. The Settling Generator/Transporter Defendants agree to reimburse the United States for the Conditional Orphan Share Compensation in accordance with the provisions provided herein.

63. There shall be no adjustment of the Conditional Orphan Share Compensation if Settling Generator/Transporter Defendants have performed or definitely will perform contingent items 1, 2, and 3, as specified in Appendix H if the Revised Remedial Contingencies Cost Estimate is equal to or greater than \$4,887 million.

64. The Settling Generator/Transporters shall pay to the Hazardous Substances Superfund \$800,000 as reimbursement for the Conditional Orphan Share Compensation, if Settling Generator/Transporter Defendants have not or will not be required to perform any of the remedial contingencies specified in Appendix H.

65. a. If the Revised Remedial Contingencies Cost Estimate is greater than \$ 0 but less than \$ 4.887 million the Settling Generator/Transporter Defendants shall pay to the Hazardous Substances Superfund a percentage of the \$800,000 based on the following formula:  $(1 - (\frac{\text{the Revised Remedial Contingencies Cost Estimate}}{\text{the Revised Remedial Contingencies Cost Estimate} + \text{the estimated costs of all contingency components of the 1999 Remedial Contingencies Cost Estimate not included in the Revised Remedial Contingencies Cost Estimate}})) \times \$800,000$ .

b. Settling Generator/Transporter Defendants agree that, if the formula set forth in subparagraph a. above that determines the amount of monies that they shall re-pay to the Hazardous Substances Superfund includes costs associated with Item No. 4, as set forth in Appendix H, they shall not seek any additional orphan share compensation at any time in the future for such activities.

66. Within 60 days of receipt of a determination for payment of some or all of the Conditional Orphan Share Compensation, Settling Generator/Transporter shall make such payment pursuant to the provisions set forth in Section XXI (Procedures for the Reimbursement of Response Costs).

67. Settling Generator/Transporter Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. On an annual basis, the United States will send Settling Generator/Transporter Defendants a bill, requiring payment that includes an Itemized Cost Summary for EPA's Future Response Costs, a cost summary report for the Department of Justice's Future Response Costs, and copies of EPA's contractor progress reports, or equivalent documentation, for the billing period, provided that those reports are available and provided that EPA may determine that part or all of such reports are not releasable under 40 C.F.R. Part 2. Settling Generator/Transporter Defendants shall make all payments within 60 days of Settling Generator/Transporter Defendants' receipt of each bill requiring payment. The Settling Generator/Transporter Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID # 0573, the DOJ case number

90-11-3-1620 , and the name and address of the party making payment. The Settling Generator/Transporter Defendants shall send the check(s) to U.S. EPA Region V, Attention: Program Accounting and Analysis Section; Comptroller Branch, P.O. Box 70753, Chicago, Illinois 60673 and shall send copies of the check(s) to the United States as specified in Section XXXIV (Notices and Submissions).

68. Settling Generator/Transporter Defendants may contest payment of any Future Response Costs under Paragraph 67 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the United States pursuant to Section XXXIV (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Generator/Transporter Defendants shall within the 60 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 67. Simultaneously, the Settling Generator/Transporter Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Ohio and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Generator/Transporter Defendants shall send to the United States, as provided in Section XXXIV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the

Settling Generator/Transporter Defendants shall initiate the Dispute Resolution procedures in Section XXV (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Generator/Transporter Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 67. If the Settling Generator/Transporter Defendants prevail concerning any aspect of the contested costs, the Settling Generator/Transporter Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 67; Settling Generator/Transporter Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXV. (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Generator/Transporter Defendants' obligation to reimburse the United States for its Future Response Costs.

69. In the event that the payments required by Paragraphs 67 and 68 are not made within 60 days of the Settling Generator/Transporter Defendants' receipt of the written determination or bill, Settling Generator/Transporter Defendants shall pay Interest on the unpaid balance. The Interest on the reimbursement of Conditional Orphan Share Compensation and Future Response Costs shall begin to accrue on the date of the written determination or bill. The Interest shall accrue through the date of the Settling Generator/Transporter Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Generator/Transporter Defendants' failure to make timely payments under this Section. The Settling Generator/Transporter Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 67.

XIX. REIMBURSEMENT OF RESPONSE COSTS BY SETTLING FEDERAL AGENCIES  
AND SETTLING DE MINIMIS FEDERAL AGENCIES

70. a. As soon as reasonably practicable, after the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies and the Settling De Minimis Federal Agencies (excluding the United States Postal Service), shall:

(i) On behalf of the Settling Federal Agencies, pay to the Skinner Landfill Special Account within the EPA Hazardous Substance Superfund in reimbursement of Future Response Costs and the Settling Generator/Transporter Defendants' Response Costs, the respective amounts indicated in Appendix F<sup>1</sup> of this Consent Decree.

(ii) On behalf of the Settling De Minimis Federal Agencies (excluding the United States Postal Service) pay to the Skinner Landfill Special Account within the EPA Hazardous Substance Superfund in reimbursement of Past and Future Response Costs and the Settling Generator/Transporter Defendants' future Response Costs, the respective amounts indicated in Column A of Appendix F of this Consent Decree.

(iii) On behalf of the Settling De Minimis Federal Agencies (excluding the United States Postal Service) and in accordance with instructions provided by a representative of Plaintiffs' Group, pay the amounts shown in Column B of Appendix F in reimbursement of past Response Costs incurred by Plaintiffs' Group in connection with the Site.

b. As soon as reasonably practicable after the effective date of this Consent Decree, the United States Postal Service shall:

(i) Pay to the Skinner Landfill Special Account within the EPA Hazardous Substances Superfund in reimbursement of Past and Future Response Costs and the Settling

Generator/Transporter Defendants' future Response Costs, the amount indicated in Column A of Appendix F.

(ii) In accordance with instructions provided by a representative of Plaintiffs' Group, pay the amount shown in Column B of Appendix F in reimbursement of past Response Costs incurred by Plaintiffs' Group in connection with the Site.

71. If the Settling Generator/Transporter Defendants reimburse the United States, pursuant to Section XVIII (Reimbursement of Response Costs by Settling Generator/Transporter Defendants) of this Consent Decree, for all or any portion of the Conditional Orphan Share Compensation, then, as soon as reasonably practicable after Settling Generator/Transporter Defendants have certified to the Settling Federal Agencies pursuant to 28 U.S.C. § 1746 (i) that the Settling Generator/Transporter Defendants have made such payment to the United States and (ii) that all disputes between EPA and the Settling Generator/Transporter Defendants regarding such payment have been finally resolved, the United States, on behalf of the Settling Federal Agencies, shall pay the Settling Generator/Transporter Defendants, in accordance with instructions provided by the Settling Generator/Transporter Defendants, an amount equal to 0.77231% of the amount the Settling Generator/Transporter Defendants paid the United States in reimbursement of Conditional Orphan Share Compensation.

72. In the event that payments required by Paragraph 70 are not made within 30 days of the effective date of this Consent Decree, or in the event that a payment required by Paragraph 71 is not made within 60 days of the date on which the Settling Federal Agencies receive the certification required by that Paragraph, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.



73. Each Settling De Minimis Federal Agency's payment includes an amount for a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA or the Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which that Settling De Minimis Federal Agency's payments are based.

74. The parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies and Settling De Minimis Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency or Settling De Minimis Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XX. REIMBURSEMENT OF RESPONSE COSTS BY  
SETTLING DE MINIMIS DEFENDANTS

75. Within 30 days following the lodging of this Consent Decree, each Settling De Minimis Defendant shall:

a. Pay to the Skinner Landfill Special Account within the EPA Hazardous Substance Superfund, in reimbursement of Past Response Costs, and Future Response Costs and Response Costs incurred and to be incurred by the Settling Generator/Transporter Defendants, the amount listed in Column A of Appendix G of this Consent Decree. Payments shall be made pursuant to the provisions set forth in Section XXI (Procedures for Reimbursement of Response Costs).

b. In accordance with instructions provided by a representative of Plaintiffs' Group, pay the amounts shown in Column B of Appendix G in reimbursement of certain Response Costs incurred by Plaintiffs' Group in connection with the Site;

76. Each Settling De Minimis Defendant's payment includes an amount for a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Settling De Minimis Defendants' payments are based.

77. In the event that a Settling De Minimis Defendant fails to make payments required by Paragraph 75 with 30 days of the lodging of this Consent Decree, that Settling De Minimis Defendant shall pay Interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), commencing on the due date of each payment and accruing through the date of the payment. In addition, if any Settling De Minimis Defendant fails to make full payment as required by this Consent Decree, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling De Minimis Defendant seeking payment and/or seeking civil penalties under Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), for failure to make timely payment.

#### XXI. PROCEDURES FOR THE REIMBURSEMENT OF RESPONSE COSTS

78. This Section sets forth the procedures for the payment of monies into the Skinner Landfill Special Account, in reimbursement of EPA's Past and Future Response Costs, and the reimbursement of the future Response Costs of the Settling Generator/Transporter Defendants by the Settling De Minimis Defendants. The provisions of this Section also apply in the event that Settling Generator/Transporter Defendants are required to make any re-payment of the

Conditional Orphan Share Compensation, as set forth in Paragraph 66 of Section XVIII. Settling Generator/Transporter Defendants' payment of Future Response Costs are not governed by this Section; the procedures for their payment of Future Response Costs are set forth in Paragraph 67 of Section XVIII.

79. At the time an obligation for the reimbursement of Response Costs becomes incumbent upon a Settling Defendant, pursuant to the provisions of this Consent Decree or its incorporated appendices, that Settling Defendant shall reimburse Response Costs in the following manner:

a. Payment shall be sent by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number\_\_\_\_\_, the EPA Region and Site/Spill ID # 0573 and DOJ case number, 90-11-3-1620. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Ohio, Eastern Division," following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

b. The Settling Defendant making the payment shall send notice that such payment has been made to the United States as specified in Section XXXIV (Notices and Submissions) and to Anthony Audia, Section Chief, Program Accounting and Analysis Section; Comptroller Branch, ML-10C, U.S. EPA; 77 West Jackson; Chicago, Illinois 60604.

80. In the event that a Settling Defendant's payment obligation (or, if payments are being made pursuant to a payment schedule, scheduled payment) is less than \$10,000, reimbursement of EPA's Response Costs shall be made by a certified or cashier's check or checks made payable

to "U.S. Department of Justice." The Settling Defendants shall forward the check(s) to the United States Attorney's Office, Southern District of Ohio, Attention: Collections, 280 N. High Street, Fourth Floor, Columbus, Ohio 43215; referencing U.S.A.O. file number\_\_\_\_\_, the EPA Region and Site/Spill ID # 0573, the DOJ case number 90-11-3-1620, and the name and address of the party making payment, and shall send copies of the check(s) to the United States as specified in Section XXXIV (Notices and Submissions) and Anthony Audia, Section Chief; Program Accounting and Analysis Section; Comptroller Branch, ML-IOC, U.S. EPA; 77 West Jackson; Chicago, Illinois 60604.

81. In the event that the payments required by this Consent Decree and its incorporated appendices are not made by a particular Settling Defendant within 30 days of the date due under this Consent Decree, the particular Settling Defendant owing the payment obligation shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date payment was due and shall continue to accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of the particular Settling Defendant's failure to make timely payments under this Section. The Settling Defendant owing Interest shall make all payments required by this Paragraph in the same manner as that described in Paragraph 67, which sets forth procedures for the Settling Generator/Transporter Defendants' payment of Future Response Costs.

#### XXII. CREATION AND USE OF SKINNER SPECIAL ACCOUNT

82. All monies that are to be paid pursuant to this Consent Decree to the EPA Hazardous Substance Superfund on behalf of the Settling De Minimis Federal Agencies and the Settling Federal Agencies, by the Settling De Minimis Defendants, by the Settling Owner/ Operator Defendants, and by any Settling Municipalities reaching a final settlement with EPA pursuant to

the Agency's MSW Policy within 30 days of the entry of this Consent Decree, shall be deposited in an account designated as the Skinner Landfill Special Account within the EPA Hazardous Substances Superfund, pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3). These monies shall be retained and used at the Site by EPA to conduct or finance response actions at or in connection with the Site, including the disbursement of monies potentially available to the Settling Generator/Transporter Defendants in accordance with this Section. Any monies not potentially available for disbursement to the Settling Generator/Transporter Defendants may also be used to reimburse the United States for response costs incurred prior to June 30, 1999.

83. Subject to the terms and conditions set forth in this Consent Decree, EPA agrees to make available certain funds in the Skinner Landfill Special Account for disbursement to Settling Generator/Transporter Defendants as partial reimbursement for the Remedial Action to be conducted pursuant to this Consent Decree. EPA shall disburse such funds from the Skinner Landfill Special Account to Settling Generator/Transporter Defendants in accordance with the procedures set forth in this Section.

84. a. Pursuant to the provisions of this Consent Decree, EPA agrees to disburse 80% of the funds received and deposited in the Skinner Landfill Special Account from the settlements with the Settling De Minimis Federal Agencies, the Settling Federal Agencies, the Settling De Minimis Defendants, and the Settling Municipalities, including all interest thereon earned from the date the funds are deposited in the Skinner Landfill Special Account to the date the Settling Generator/Transporter Defendants submit to EPA the certification or other documents required by Paragraph 85. Settling Generator/Transporter Defendants waive all rights to dispute EPA's determination of the amount of funds available in the Skinner Landfill Special Account.

b. To the extent that any monies are generated from any future settlements reached after the lodging of this Consent Decree (or after the entry of this Consent Decree, in the case of any additional settlements under the MSW Policy), including monies derived from the Settling Owner/Operator Defendants or a Prospective Purchaser from the sale of all or a portion of the Site, any disbursement of those monies from the Skinner Landfill Special Account to the Settling Generator/Transporter Defendants will be embodied in a separate settlement agreement between EPA and the Settling Generator/Transporter Defendants.

85. Certification by Settling Generator/Transporter Defendants. Within ninety (90) days of the completion of each construction phase of the Remedial Action set forth in Paragraph 87 of this Consent Decree, Settling Generator/Transporter Defendants shall submit to EPA a written cost summary and certification of the complete and accurate total costs incurred and paid by Settling Generator/Transporter Defendants for the particular phase for which reimbursement is sought. Settling Generator/Transporter Defendants' certification for each construction phase shall contain the following statement signed by the Chief Financial Officer of a Settling Generator/Transporter Defendant, Independent Certified Public Accountant, or other independent person acceptable to EPA: "To the best of my knowledge, after thorough investigation and review of Settling Generator/Transporter Defendants' detailed cost documentation of the [construction phase for which reimbursement is sought] of the Remedial Action, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment." The Chief Financial Officer of a Settling Party, Independent Certified Public Accountant, or other independent person acceptable to EPA shall also provide a description of the cost materials reviewed that support the certification.

86. Response Costs Excluded From Disbursement. The following costs are excluded from disbursement to the Settling Generator/Transporter Defendants from the Skinner Landfill Special Account and the Settling Generator/Transporter Defendants shall not submit a request for disbursement that includes any of the following cost items: (i) costs incurred by Settling Generator/Transporter Defendants in reimbursing the United States for Conditional Orphan Share Compensation pursuant to Paragraph 66 of this Consent Decree; (ii) Future Response Costs paid pursuant to Paragraph 67 of this Consent Decree; (iii) attorneys' fees or costs, except for those attorneys fees or costs incurred by Settling Generator/ Transporter Defendants pursuant to Section X of this Consent Decree related to access and institutional controls for purposes of the implementation of the Work; (iv) costs of any response activities Settling Generator/Transporter Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (v) costs related to Settling Generator/ Transporter Defendants' litigation, settlement, or responsible party or defendant search activities; (vi) internal costs of Settling Generator/ Transporter Defendants, including but not limited to, salaries, travel, or in-kind services; or (vii) interest or stipulated or other penalties paid pursuant to Paragraphs 69 and 113 of this Consent Decree.

87. Within sixty (60) days of EPA's receipt of the Settling Generator/Transporter Defendants' complete and accurate cost summary, certification or other documentation required by Paragraph 85, EPA shall determine whether the construction phase associated with the certification is complete, and whether the certification is complete. Within 30 days of making such a determination, EPA shall disburse from the Skinner Landfill Special Account to the Settling Generator/Transporter Defendants the costs incurred by the Settling Generator/ Transporter Defendants according to the following schedule, and disbursement limitations, set forth below:

a. Upon completion of all the activities to be commenced by December 31, 1999, as set forth in Paragraph 12.d. of this Consent Decree, and completion of construction of the groundwater interception system in accordance with the design standards for the interception system as set forth in the Remedial Design, the disbursement shall equal but not exceed 50% of the funds available for disbursement (as provided by Paragraph 84) to the Settling Generator/Transporter Defendants from the Skinner Landfill Special Account.

b. Upon completion of the landfill cap according to the Performance Standards set forth in Section VII., Paragraph 13.a. of this Consent Decree, the disbursement shall equal the remaining monies available for disbursement (as provided by Paragraph 84) to the Settling Generator/Transporter Defendants from the Skinner Landfill Special Account, at the time of disbursement,

c. After the completion of the activities referred to in sub-Paragraphs (a) and (b) above, and at six-month intervals after the disbursement of monies following completion of the landfill cap, to the extent that there are any additional monies received and deposited from the settlements referred to in Paragraph 84.a., above, those monies available for disbursement to the Settling Generator/Transporter Defendants, plus any Interest earned on such amounts pursuant to the same Paragraph.

88. If EPA finds that the Settling Generator/Transporter Defendants' certification includes an accounting error or a cost excluded under Paragraph 86 of this Section, EPA shall recalculate the response costs and disburse the corrected amount. If Settling Generator/Transporter Defendants find that EPA has made an accounting error, and EPA agrees that such an accounting error was actually made, EPA shall recalculate the funds available for disbursement from the Skinner Landfill Special Account. If the Settling Generator/Transporter Defendants' complete and



accurate total costs actually expended are less than amounts they are eligible to receive pursuant to this Section, then Settling Generator/Transporter Defendants may only seek reimbursement for the complete and accurate total costs actually expended.

89. Once EPA determines that the provisions in Paragraph 87 have been met, the disbursement of funds from EPA to the Settling Generator/Transporter Defendants will be determined by the parties in accordance with applicable law.

90. Termination of Disbursements from the Special Account

EPA's obligation to disburse funds from the Skinner Landfill Special Account under this Consent Decree shall terminate: (i) upon EPA's determination that Settling Generator/Transporter Defendants have submitted a materially false certification, or an inaccurate, incomplete, or misleading certification, after being given an opportunity to cure the deficiency, or that Settling Generator/Transporter Defendants failed to submit the certification required under this Consent Decree; or (ii) upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 126 of this Consent Decree, where such assumption of Work is not challenged by Settling Generator/Transporter Defendants or, if challenged, is upheld under the dispute resolution provisions in Section XXV of this Consent Decree. In the event that EPA assumes performance of a portion or all of the Work, Settling Generator/Transporter Defendants shall be subject to an enforcement action under Paragraph 116.b. of the Consent Decree, including, but not limited to, stipulated penalties. Settling Generator/Transporter Defendants may dispute EPA's termination of special account disbursements pursuant to the Dispute Resolution provisions of this Consent Decree.

91. Recapture of Special Account Disbursements

Upon termination of special account disbursements under Paragraph 90 of this Section, EPA shall submit a bill to Settling Generator/Transporter Defendants for amounts already disbursed from the Skinner Landfill Special Account specifically related to the reason for the termination, with accrued Interest on that amount. The recapture of special account disbursements under this Paragraph shall not constitute a waiver of criminal liability, and shall not be in lieu of any penalty provided under this Consent Decree or any other remedy under any other applicable provision of law. Interest shall accrue from the date of disbursement of the funds from the Skinner Landfill Special Account through the date of repayment. Within sixty (60) days of receipt of the bill, Settling Generator/Transporter Defendants shall reimburse the United States for all amounts billed pursuant to this Paragraph, in the form of a certified or cashier's check made payable to "Skinner Landfill Special Account." The check, or a transmittal accompanying the check, shall reference EPA Region V, Skinner Landfill, West Chester, Ohio, Site ID 0573, the DOJ case number, 90-11-3-1620, and the name and address of the Settling Generator/Transporter Defendants making payment. The Settling Generator/Transporter Defendants shall send the check(s) to EPA Region V, Attention: Program Accounting and Analysis Section; Comptroller Branch, P.O. Box 70753, Chicago, Illinois 60673 and shall send copies of the check(s) to the United States as specified under Section XXXIV (Notice and Submissions) of this Consent Decree, and to Anthony Audia, Section Chief; Program Accounting and Analysis Section; Comptroller Branch, ML-10C, U.S. EPA; 77 West Jackson; Chicago, Illinois 60604. Notwithstanding Settling Generator/Transporter Defendants' rights under Paragraph 92 of this Consent Decree, EPA's accounting as to the amount of recapture of funds shall not be subject to challenge by Settling Generator/Transporter Defendants pursuant to the Dispute Resolution

provisions of this Consent Decree or in any other forum. However, Settling Generator/Transporter Defendants shall have the right to contest, pursuant to the Dispute Resolution provisions of this Consent Decree, an accounting error by EPA where the amount contested exceeds \$5,000, or where EPA's decision as to whether the activities for which amounts are sought to be recaptured under this Paragraph were specifically related to the reason for the termination of the disbursement from the special account.

92. Balance of Special Account Funds

After EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree and after EPA completes all disbursement(s) to Settling Generator/Transporter Defendants pursuant to this Section, if any funds remain in the Skinner Landfill Special Account, EPA may cause all or any portion of such funds to revert to the EPA Hazardous Substance Superfund. Such reversion of funds to the EPA Hazardous Substance Superfund shall not be subject to challenge by Settling Generator/Transporter Defendants pursuant to the Dispute Resolution provisions of this Consent Decree or in any other forum.

XXIII. INDEMNIFICATION AND INSURANCE

93. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Generator/Transporter Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Generator/Transporter Defendants shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agencies) and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Generator/Transporter Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their

behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Generator/Transporter Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Generator/Transporter Defendants agree to pay the United States (with the exception of the Settling Federal Agencies) all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Generator/Transporter Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Generator/Transporter Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Generator/Transporter Defendants nor any such contractor shall be considered an agent of the United States. Nothing in this Section shall be construed as creating a duty of the Settling Generator/Transporter Defendants to indemnify the Settling Owner/Operator Defendants for Work conducted pursuant to this Consent Decree. Nothing in this Consent Decree shall be deemed to create any obligation on behalf of the Settling Generator/Transporter Defendants to indemnify the United States for any acts or omissions of the Settling Owner/Operator Defendants, its agents, employees, contractors, tenants and guests.

b. The United States shall give Settling Generator/Transporter Defendants prompt notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 93. a., and shall consult with Settling Generator/Transporter Defendants prior to settling such claim.

94. Settling Generator/Transporter Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Generator/Transporter Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Generator/Transporter Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Generator/Transporter Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

95. No later than 15 days before commencing any on-site Work, Settling Generator/Transporter Defendants shall, by contract, require their contractors to secure, and maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 56.b. of Section XVI (Certification of Completion) comprehensive general liability insurance with limits of \$1 million dollars, combined single limit, and automobile liability insurance with limits of \$1 million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Generator/Transporter Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Generator/Transporter Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Generator/Transporter Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling

Generator/Transporter Defendants shall, by contract, require their contractors to resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Generator/Transporter Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Generator/Transporter Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### XXIV. FORCE MAJEURE

96. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Generator/Transporter Defendants, of any entity controlled by Settling Generator/Transporter Defendants, or of Settling Generator/Transporter Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Generator/Transporter Defendants' best efforts to fulfill the obligation. The requirement that the Settling Generator/Transporter Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

97. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Generator/Transporter Defendants shall notify orally EPA's Project Coordinator or, in his or her

absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region V, within 72 hours of when Settling Generator/Transporter Defendants first know that the event might cause a delay. Within 14 days thereafter, Settling Generator/Transporter Defendants shall provide in writing to EPA and the State : (1) an explanation and description of the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (5) the Settling Generator/Transporter Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and, (6) a statement as to whether, in the opinion of the Settling Generator/Transporter Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Generator/Transporter Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. A material failure to comply with the above requirements shall preclude Settling Generator/Transporter Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Generator/Transporter Defendants shall be deemed to know of any circumstance of which Settling Generator/Transporter Defendants, any entity controlled by Settling Generator/Transporter Defendants, or Settling Generator/Transporter Defendants' contractors knew or should have known.

98. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure

event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Generator/Transporter Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

99. If the Settling Generator/Transporter Defendants elect to invoke the dispute resolution procedures set forth in Section XXV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Generator/Transporter Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Generator/Transporter Defendants substantially complied with the requirements of Paragraphs 96 and 97, above. If Settling Generator/Transporter Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Generator/Transporter Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.



## XXV. DISPUTE RESOLUTION

100. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall apply to and be the exclusive mechanism to resolve all disputes arising under or with respect to this Consent Decree, regardless of whether this Section is expressly cited in the provision under which the dispute arises. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

101. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of good faith negotiations between the parties to the dispute. The period for good-faith negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one Party receives a written Notice of Dispute from the other Party.

102. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the good faith negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 103 or Paragraph 104.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 103 or 104. Within 15 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 103 or 104, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 103 and 104.

103. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the provisions of the ROD or Remedial Design.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this

Section. Where appropriate, EPA shall allow submission of supplemental statements of position by the parties to the dispute; provided that all parties to this Consent Decree, as provided in the Notice and Submissions section of this Consent Decree (Section XXXIV), shall be served with such statements of position and supplemental statements.

b. The Director of the Superfund Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 104.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 103.C. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 105.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 30 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion in accordance with the Federal Rules of Civil Procedure and any applicable local rules of this Court.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious, contrary to the provisions of this Consent Decree, or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 103.a. The administrative record may be supplemented where allowed by applicable principles of administrative law.

104. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 102, the Director of the Superfund Division, EPA Region V, will issue a final decision resolving the dispute. The decision of the Director, Superfund Division shall be binding on the Settling Defendants unless, within 30 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph Q of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

105. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 113. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the

disputed issue, stipulated penalties shall be assessed and paid;  
(Stipulated Penalties).

XXVI. STIPULATED PENALTIES

106. Settling Generator/Transporter Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 107 and 108. Settling Operator Defendants shall be liable to the United States for stipulated penalties set forth in Paragraph 110, for failure to comply with the requirements specified below, unless excused under Section XXIV (Force Majeure) or Paragraph 117.

"Compliance" by Settling Generator/Transporter Defendants shall include completion of the Work or portion thereof, under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the Remedial Design, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

107. The following stipulated penalties shall accrue per violation per day:

PENALTY PER VIOLATION PER DAY

	DAY 3 TO <u>DAY 30</u>	31 TO <u>60 DAYS</u>	OVER <u>60 DAYS</u>
<u>REMEDY COMPONENT</u>			
a.. Initiation of all remaining field work, as defined by Paragraph 12.e. before EPA's approval of the Remedial Action Work Plan and Authorization to Commence	\$2500	\$3750	\$7500

PENALTY PER VIOLATION PER DAY

REMEDY COMPONENT

	<u>DAY 3 TO DAY 30</u>	<u>31 TO 60 DAYS</u>	<u>OVER 60 DAYS</u>
b. Failure to implement the Following Components of the Remedial Action, Pursuant to the Performance Standards and According to the Schedule Set Forth in the Remedial <u>Action Work Plan and this Consent Decree:</u>			
1. Mobilize to the Site and begin Work within 30 days after EPA's approval of the Remedial Action Work Plan and Authorization to Commence	\$2500	\$3750	\$7500
2. Maintain a temporary fence during construction of the Remedial Action and repair and maintain existing permanent fence following completion of the remedial action	\$1000	\$2000	\$3750
3. Begin excavation and consolidation of contaminated soils	\$2500	\$3750	\$7500
4. Install Cover system	\$2500	\$3750	\$7500
5. Begin construction of groundwater trench and construction of groundwater treatment system, if treatment system needed.	\$2500	\$3750	\$7500

6. Implement an air emission and surface water monitoring program during the construction of the Remedial Action	\$2500	\$3750	\$7500
7. Implement O&M groundwater monitoring according to the monitoring requirements and schedule contained in the O&M Plan.	\$2500	\$3750	\$7500
8. Failure to initiate activities required by the O&M Plan in the event that - contaminant levels above the Modified Trigger Levels are detected at the Points of Compliance.	\$3500	\$6000	\$ 10,000
9. Failure to treat ground-water to the pre-treatment standards of the POTW, or meet other substantive limits approved by EPA as part of the O&M plan on a surface water discharge, whichever is applicable, prior to discharge.	\$2500	\$3750	\$7500
10. Implementation of O&M requirements for cover system	\$2500	\$3750	\$7500
11. Failure to give EPA 72 hours notice of any change in the schedule for Work	\$1500	\$2000	\$4000

12. For situations other than  
Subparagraph b.8 of this Paragraph,  
failure to give notice or take action  
to abate an endangerment  
under Section XVII  
(Emergency Response)

\$3500

\$6000

\$10,000

108. The following stipulated penalties shall accrue per violation per day for material  
failure to submit timely or adequate reports (or other written documents), or, as required by EPA,  
any revisions to the following written documents, pursuant to this Consent Decree:

	<u>PENALTY PER VIOLATION PER DAY</u>		
	<u>DAY 3 TO DAY 30</u>	<u>31 TO 60 DAYS</u>	<u>OVER 60 DAYS</u>
<u>Report or Document:</u>			
Revisions to the Remedial Action Work Plan if required by EPA, and otherwise not separately identified in this Paragraph.	\$2500	\$3750	\$7500
Monthly Progress Reports during RA Prefinal Inspection Report, Remedial Action Completion Report, Completion of Construction Report, and Completion of Work Report	\$500	\$1000	\$2500
Quarterly Progress Reports during O&M	\$500	\$1000	\$2500
Performance Standard Verification Plan	\$2500	\$3750	\$7500
Design Plans and Specifications	\$2500	\$3750	\$7500



Contingency Plan	\$2500	\$3750	\$7500
Health and Safety Plan	\$2500	\$3750	\$7500
Operation and Maintenance Plan	\$2500	\$3750	\$7500
O&M Quality Assurance Plan	\$2500	\$3750	\$7500

109. Notwithstanding Paragraphs 107 and 108, if Settling Generator/Transporter Defendants complete construction of the landfill cap and the groundwater interception system according to the construction completion date set forth in the EPA-approved schedule established pursuant to the provisions of Paragraph 12.e. of this Consent Decree, all stipulated penalties assessed against such Defendants for failures to comply with this Decree prior to that date shall be waived, with the exception of the stipulated penalties set forth in Subparagraphs 107.b.8, 107.b.9, 107.b.12 of this Section.

110. Settling Owner/Operator Defendants shall be liable to the United States for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XXIV. (Force Majeure) or Paragraph 117: (a) failure to provide access as required by Section X of this Consent Decree: \$10,000 per day; (b) allowing or permitting other persons to bring Waste Material or Scrap Metal on the Site: \$10,000 per day until the Waste Material or Scrap Metal is removed; (c) failure to refrain from using the Site or such other property in a manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented under this Consent Decree: \$10,000 per day; and (d) failure to execute and record, if EPA so requests, an easement running with the land consistent with the requirements of Paragraph 27(d) of this Consent Decree: \$7500 per day. In addition to the foregoing stipulated penalties for which the

Settling Owner/Operator Defendants shall be liable to EPA, Settling Owner/Operator Defendants shall be liable to the Settling Generator/Transporter Defendants for all costs and attorneys fees incurred by the Settling Generator/Transporter Defendants under this Consent Decree as a result of Settling Owner/Operator Defendants' failure to comply with this Consent Decree.

111. All penalties shall begin to accrue on the third day after either the day when the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIII (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region V, under Paragraph 103.b. or 104.a. of Section XXV (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XXV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

112. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA shall give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand

for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

113.a. All penalties accruing under this Section shall be due and payable to the United States within 60 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the dispute resolution procedures under Section XXV. (Dispute Resolution). Settling Owner/Operator Defendants shall pay stipulated penalties when due according to the procedures set forth in Subparagraph b. of this Paragraph. Even though penalties are due and payable, Settling Generator/Transporter Defendants may deposit stipulated penalties into an interest-bearing escrow account, except for those penalties accruing under Subparagraphs 107.b.8., 107.b.9, and 107.b.12 of this Section, which shall be paid when due according to Subparagraph b. of this Paragraph. Settling Generator/Transporter Defendants shall send notice of the establishment of the interest-bearing escrow account and the amounts deposited thereto as provided in Section XXXIV (Notices and Submissions). If EPA certifies to the escrow agent that Settling Generator/Transporter Defendants have completed construction by the Construction Completion Date, Settling Generator/Transporter Defendants shall be paid the balance in the escrow account. If EPA certifies to the escrow agent that the Settling Generator/Transporter Defendants have not completed construction by the Construction Completion Date, the balance of the escrow account shall be paid to the United States pursuant to Subparagraph b. of this Paragraph. As to any stipulated penalty arguably subject to waiver pursuant to Paragraph 109, to the extent to which Settling Generator/Transporter Defendants had an opportunity to invoke the dispute resolution provisions of this Consent Decree, whether or not exercised, Settling Generator/Transporter Defendants may not dispute whether a violation giving rise to stipulated penalties actually occurred or the amount of stipulated penalties assessed, or any

other issues regarding the violations or the stipulated penalties. Additionally, Settling Generator/Transporter Defendants shall not be entitled, as of right, to a waiver of stipulated penalties pursuant to Paragraph 109 unless EPA determines during the Pre-Final Inspection that Settling Generator/Transporter Defendants have strictly complied with the construction performance standards set forth in Paragraph 13.a. and b.(1) and (2) (or as otherwise subsequently modified by EPA) and completed construction by the Construction Completion Date. Substantial completion of construction by the Construction Completion Date shall not entitle Settling Generator/Transporter-Defendants to a waiver of accrued stipulated penalties pursuant to Paragraph 109.

113.b. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund" and shall be mailed to U.S. EPA, Region V, Attention: Program Accounting and Analysis Section, Comptroller Branch, P.O. Box 70753, Chicago, Illinois 60673. Each payment shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0573, the DOJ Case Number 90-11-3-1620, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXXIV (Notices and Submissions).

114. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

115. Penalties shall continue to accrue as provided in Paragraph 111 during any dispute resolution period, but need not be paid, according to the provisions of Paragraph 113, until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 60 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. If applicable, the escrow account may be the same account that was established under the provisions of Paragraph 113.a. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

116. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 112.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of an intentional violation of the Consent Decree. The Settling Generator/Transporter Defendants shall not be liable for violations of the Consent Decree by the Settling Owner/Operator Defendants.

117. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion or all stipulated penalties that have accrued pursuant to this Consent Decree.

XXVII. COVENANTS BY PLAINTIFF WITH RESPECT TO NON-DE MINIMIS PARTIES

118. Except as specifically provided in Paragraphs 123-126 and 128 of this Section, in consideration of: (1) the actions that will be performed and the payments that will be made by the Settling Generator/Transporter Defendants under this Consent Decree; (2) the payments that will be made, and the performance of the actions set forth in Section X. (Access and Institutional Controls) and Section XI. (Settling Owner/Operator Defendants' Obligations With Regard to The Transfer of Real Property Interests in the Site) by the Settling Owner/Operator Defendants; and (3) the payments that will be made by the Settling Federal Agencies under the terms of this Consent Decree, the United States covenants not to sue or to take administrative action against the Settling Generator/Transporter Defendants, and the Settling Owner/Operator Defendants, and EPA covenants not to take administrative action against the Settling Federal Agencies, pursuant to CERCLA Sections 106, 107(a) and 113, 42 U.S.C. §§ 9606, 9607 and 9613, and RCRA Section 7003, 42 U.S.C. § 6973, relating to the Site.

119. Except with respect to future liability, the United States' covenant not to sue with respect to the Settling Generator/Transporter Defendants shall take effect upon the entry of this

Consent Decree, and EPA's covenant not to take administrative action against the Settling Federal Agencies shall take effect upon receipt by the Skinner Landfill Special Account within the Hazardous Substance Superfund of the payments required of the Settling Federal Agencies by Section XIX (Reimbursement of Response Costs by Settling Federal Agencies and Settling De Minimis Federal Agencies).

120. Except with respect to future liability, the United States' covenant not to sue with respect to the Settling Owner/Operator Defendants shall take effect upon the United States' receipt of a certified copy of the access and restrictive easements that the Owner/Operator Defendants are required to grant pursuant to Section X (Access and Institutional Controls), and their execution of the option to purchase as required by Section XI of this Consent Decree. With respect to future liability, the United States' covenants not to sue as to the Settling Owner/ Operator Defendants shall take effect upon the issuance by EPA of the Certification of Completion of the Remedial Action.

121. The United States' covenants in Section XXVII of this Consent Decree are conditioned upon the satisfactory performance by the Settling Generator/Transporter Defendants of their obligations and upon the satisfactory performance by each of the Settling Owner/Operator Defendants of its respective obligations under this Consent Decree, and EPA's covenant not to take administrative action against the Settling Federal Agencies is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. The United States' covenants in Section XXVII of this Consent Decree extend only to the Settling Generator/Transporter Defendants and the Settling Owner/Operator Defendants and do not extend to any other person. EPA's covenant not to take administrative action against the

Settling Federal Agencies extends only to the Settling Federal Agencies and does not extend to any other person.

122. United States' Pre-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Non-De Minimis Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, to: (1) perform further response actions relating to the Site or (2) reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

123. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Non-De Minimis Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies, to: (1) perform further response actions relating to the Site; or (2) reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:



(1) conditions at the Site, previously unknown to EPA, are discovered, or  
(2) information, previously unknown to EPA, is received, in whole or in part, and  
these previously unknown conditions or this information together with other relevant information  
indicate that the Remedial Action is not protective of human health or the environment.

124. a. For purposes of Paragraph 122, the information and conditions known to EPA shall include only that information and those conditions known to EPA as of the effective date of this Consent Decree, as set forth in the interim ROD and in the Record of Decision for the Site and the administrative-record supporting the interim ROD and the Record of Decision, post-ROD administrative record, any information submitted to EPA pursuant to the Remedial Design AOC, including the approved Remedial Design or the UAO.

b. For purposes of Paragraph 123, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action, as set forth in the interim ROD and in the Record of Decision, the administrative record supporting the interim ROD and the Record of Decision, any information submitted to EPA pursuant to the Remedial Design AOC, including the approved Remedial Design, the post-ROD administrative record, the UAO, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

125. General Reservations of Rights as to Settling Non De Minimis Defendants and Settling Federal Agencies.

The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraph 118. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Non De Minimis Defendants, and EPA and the federal

natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by any Settling Non-De Minimis Defendant or the Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;
- f. liability for violations of federal or state law which occurs during or after implementation of the Remedial Action; and
- g. With regard to Settling Generator/Transporter Defendants only, liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 15 (Modification of the Remedial Design or Related Work Plans). The matters set forth in this subparagraph are not reserved as to Settling Owner/Operator Defendants and Settling Federal Agencies.

126. Work Takeover. In the event EPA determines that Settling Generator/Transporter Defendants have: (i) ceased implementation of any portion of the Work in violation of this Consent Decree, (ii) are seriously or repeatedly deficient or late in their performance of the Work,

or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Generator/Transporter Defendants may invoke the procedures set forth in Section XXV (Dispute Resolution), to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Generator/Transporter Defendants shall pay pursuant to Sections XVIII (Reimbursement of Response Costs by Settling Generator/Transporter Defendants).

XXVIII. COVENANTS WITH RESPECT TO SETTLING DE MINIMIS DEFENDANTS AND  
SETTLING DE MINIMIS FEDERAL AGENCIES

127. In consideration of the payments that will be made by the Settling De Minimis Defendants and the Settling De Minimis Federal Agencies under the terms of this Consent Decree, and except as specifically provided in Paragraphs 128-130 (Reservations of Rights Specific to Settling De Minimis Defendants and Settling De Minimis Federal Agencies), the United States covenants not to sue or take administrative action against any of the Settling De Minimis Defendants, and EPA covenants not to take administrative action against any of the Settling De Minimis Federal Agencies, pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, relating to the Site. With respect to present and future liability, these covenants shall take effect for each Settling De Minimis Defendant and for each Settling De Minimis Federal Agency upon receipt of that Settling De Minimis Defendant's or Settling De Minimis Federal Agency's full payment as required by Sections XX and XIX, respectively, of this Consent Decree. With respect to each Settling De Minimis Defendant or Settling De Minimis Federal Agency, individually, this

covenant not to sue is conditioned upon: a) the satisfactory performance by that Settling De Minimis Defendant or Settling De Minimis Federal Agency of all its obligations under this Consent Decree; b) the veracity of the information provided to EPA by that Settling De Minimis Defendant or Settling De Minimis Federal Agency relating to that Party's involvement with the Site, and c) the veracity of the information provided by that Settling De Minimis Defendant in the Court-Authorized ADR Allocation Process. These covenants extend only to the Settling De Minimis Defendants and the Settling De Minimis Federal Agencies and their successors in interest, and do not extend to any other person.

128. Reservations of Rights Specific to Settling De Minimis Defendants and Settling De Minimis Federal Agencies.

The covenants set forth in Paragraph 127 do not pertain to any matters other than those expressly specified in Paragraph 127. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling De Minimis Defendants, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling De Minimis Federal Agencies, with respect to all other matters including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- d. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the date of lodging of this Consent Decree.

129. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling De Minimis Defendant in this action or in a new action or to issue an administrative order to any individual Settling De Minimis Defendant seeking to compel that Settling De Minimis Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such Settling De Minimis Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling De Minimis Defendant no longer qualifies as a de minimis party at the Site because, Settling De Minimis Defendant contributed greater than 1.5% of the total volume of waste disposed of at the Site; or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site. The Settling De Minimis Defendant's reimbursement shall be paid to the Skinner Landfill Special Account within the Hazardous Substance Superfund, as long as that special account is still maintained by EPA. If the Skinner Landfill Special Account is no longer maintained, the reimbursement shall be paid directly to the Hazardous Substance Superfund.

130. Notwithstanding any other provision in this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to issue an administrative order to any individual Settling De Minimis Federal Agency seeking to compel that Settling De Minimis Federal Agency to perform response actions relating to the Site, and/or to reimburse EPA for additional costs of response, if information is discovered which indicates that such Settling De Minimis Federal Agency contributed hazardous substances to the Site in such greater amount or of such greater

toxic or other hazardous effects that such Settling De Minimis Federal Agency no longer qualifies as a de minimis party at the Site because Settling De Minimis Federal Agency contributed greater than 1.5% of the total volume of waste disposed of at the Site; or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site. The Settling De Minimis Federal Agency's reimbursement shall be paid to the Skinner Landfill Special Account within the Hazardous Substance Superfund, as long as that special account is still maintained by EPA. If the Skinner Landfill Special Account is no longer maintained, the reimbursement shall be paid directly to the Hazardous Substance Superfund.

131. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves rights to take any and all response actions authorized by law. Nothing in this Paragraph shall be construed to limit any right that Settling Defendants may have to object to EPA's exercise of such authority.

XXIX. COVENANTS BY SETTLING DEFENDANTS, SETTLING FEDERAL AGENCIES,  
AND SETTLING DE MINIMIS FEDERAL AGENCIES

132. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraphs 134, 135, and 159, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, the Work, past response actions, and Past and Future Response Costs (as defined herein) or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through

CERCLA Sections 106(b)(2), 107, 111, 112, and 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, and 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107(a) or 113, 42 U.S.C. §§ 9607(a) or 9613, related to the Site; or,

c. except as provided in Section XXV (Dispute Resolution), any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

133. Covenant by Settling Federal Agencies and Settling De Minimis Federal Agencies.

Settling Federal Agencies and Settling De Minimis Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. §9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law with respect to the Site, the Work, past response actions, and Past and Future Response Costs (as defined herein) or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency or Settling De Minimis Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

134. Each Settling Defendant reserves, and this Consent Decree is without prejudice to:

a. claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United

States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Generator/Transporter Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA;

b. contribution claims against all other Settling Defendants, the Settling Federal Agencies and Settling De Minimis Federal Agencies in the event any claim is asserted by the State of Ohio against a Settling Defendant relating to the Site, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the State of Ohio against that Settling Defendant.

c. contribution claims against a Settling De Minimis Defendant or Settling De Minimis Federal Agency if information is discovered which indicates that such Settling De Minimis Defendant or Settling De Minimis Federal Agency contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling De Minimis Defendant or Settling De Minimis Federal Agency no longer qualifies as a de minimis party at the Site because that Settling De Minimis Defendant or Settling De Minimis Federal Agency contributed greater than 1.5% of the total volume of waste disposed of at the Site; or the hazardous substances contributed by each Settling De Minimis Defendant and each Settling



De Minimis Federal Agency to the Site are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

135. Each Settling Non-De Minimis Defendant reserves (a) contribution claims against all other Settling Non-De Minimis Defendants and the Settling Federal Agencies in the event any claim is asserted by the United States against any Settling Non-De Minimis Defendant under the authority of or under Paragraphs 122, 123, and 125 of Section XXVII (Covenants by Plaintiff with Respect to Non-De Minimis Parties) or by a state or tribal natural resource trustee against a Settling Non-De minimis Defendant relating to the site for damages for injury to, destruction of, or loss of natural resources or for the costs of any natural resource damage assessments, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States or state or tribal natural resource trustee against a Settling Non-De Minimis Defendant, and (b) contribution claims against all Settling De Minimis Defendants and Settling De Minimis Federal Agencies in the event any claim is asserted by any federal, state or tribal natural resource trustee against a Settling Defendant relating to the Site for injury to, destruction of, or loss of natural resources or for the costs of any natural resource damage assessments, but only to the same extent and for the same matters, transactions, or occurrences as are raised in any such claims. Each Settling De Minimis Defendant reserves contribution claims against all other Settling Defendants, Settling Federal Agencies and Settling De Minimis Federal Agencies in the event any claim is asserted by any federal, state or tribal natural resource trustee against a Settling De Minimis Defendant relating to the Site for injury to, destruction of, or loss of natural resources or for the costs of any natural resource damage assessments, but only to the same extent and for the same matters, transactions, or occurrences as are raised in any such claims.

136. The Settling Federal Agencies reserve (a) contribution claims against the Settling Non-De Minimis Defendants in the event any claim is asserted by EPA against any Settling Federal Agency under the authority of or under Paragraphs 122, 123, and 125 of Section XXVII (Covenants by Plaintiff with Respect to Non-De Minimis Parties), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of EPA against the Settling Federal Agency.

137. The Settling Federal Agencies and Settling De Minimis Federal Agencies reserve: (a) contribution claims against the Settling Defendants in the event any claim is asserted by the State of Ohio against any Settling Federal Agency or Settling De Minimis Federal Agency relating to the Site, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the State of Ohio against the Settling Federal Agencies or Settling De Minimis Federal Agencies, and (b) contribution claims against all Settling Defendants in the event any claim is asserted by any federal, state or tribal natural resource trustee against a Settling Federal Agency or Settling De Minimis Federal Agency relating to the Site for damages for injury to, destruction of, or loss of natural resources or for the costs of any natural resource damage assessments, but only to the same extent and for the same matters, transactions, or occurrences as are raised in any such claims.

138. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

139. Waiver of Claims Against De Minimis Parties. Upon the entry of a non-appealable order judicially approving this Consent Decree, or upon the expiration of any time period for judicial review of this Consent Decree, Settling Defendants, Settling Federal Agencies and Settling De Minimis Federal Agencies agree to dismiss any previously-filed causes of action and agree not

to assert any new claims or causes of action that they may have for response costs incurred and to be incurred by the United States and the Settling Defendants, including for contribution, against any person where the person's liability with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. any materials contributed by such person to the Site constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed 0.2% of the total volume of waste at the Site; and

b. any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

140. The waiver set forth in Paragraph 139 shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. The waiver set forth in Paragraph 139 also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant, a Settling Federal Agency or a Settling De Minimis Federal Agency may have against any person if such person asserts a claim or cause of action relating to the Site against any such Settling Defendant, Settling Federal Agency or Settling De Minimis Federal Agency.

141. Waiver of Claims Against Settling De Minimis Defendants, Other Settling De Minimis Parties, and Settling De Minimis Federal Agencies.

Subject to the reservations set forth in Paragraph 134 of this Consent Decree, upon the entry of a non-appealable order judicially approving the Consent Decree, or upon the expiration of

any time period for judicial review of this Consent Decree, Settling Defendants, Settling Federal Agencies, and Settling De Minimis Federal Agencies agree to dismiss any previously-filed causes of action and agree to waive all claims or causes of action that they may have for response costs incurred and to be incurred by the United States and any Settling Defendant, including for contribution, against any person that has entered into a final CERCLA §122(g) de minimis settlement with EPA with respect to the Site as of the effective date of this Consent Decree. This waiver of claims is conditioned upon: (a) the satisfactory performance by each person, individually, that has entered into a final CERCLA §122(g) de minimis settlement with EPA of that person's obligations under the de minimis settlement, (b) as determined by EPA, the lack of newly-obtained information that indicates that a person who is party to a de minimis settlement no longer qualifies as a de minimis settlor.

142. Waiver of Claims Against Settling Municipalities

a. Upon the entry of a non-appealable order judicially approving the Consent Decree, or upon the expiration of any time period for judicial review, Settling Defendants, Settling Federal Agencies, and Settling De Minimis Federal Agencies agree to dismiss any previously-filed causes of action and agree not to assert any new claims or causes of action that they may have for response costs incurred and to be incurred by the United States and any Settling Defendant, including for contribution, against any person where the person's liability with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

(1) any materials contributed by such person to the Site constituted Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS), and

(2) any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials; and,

(3) any such person has entered into a final administrative settlement with EPA or judicial settlement with the United States pursuant to EPA's MSW Policy.

b. This waiver of claims is conditioned upon: (a) the satisfactory performance by each person, individually, that has entered into a final settlement pursuant to EPA's MSW Policy of that person's obligations under that settlement, (b) as determined by EPA, the lack of newly-obtained information that indicates that a person who is party to an MSW Policy settlement no longer qualifies as settlor under that Policy.

XXX. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

143. Except as provided in Paragraph 139 (Waiver of Claims Against De Micromis Parties), Paragraph 141 (Waiver of Claims Against Settling De Minimis Defendants, Other Settling De Minimis Parties, and Settling De Minimis Federal Agencies), and Paragraph 142 (Waiver of Claims Against Settling Municipalities), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraphs 139, 141, and 142, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

144. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants, the Settling Federal Agencies, and the Settling De Minimis Federal Agencies are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and Section 122 (g)(5), 42 U.S.C. § 9622(g)(5) (as applicable) for Matters Addressed as defined in Section IV (Definitions) of this Consent Decree.

145. The Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

146. The Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

147. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, or in any subsequent administrative proceeding initiated by EPA, Settling Defendants, Settling Federal Agencies and Settling De Minimis Federal Agencies shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or by EPA in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXVII (Covenants by Plaintiff With Respect To Non-De Minimis Parties).

### XXXI. ACCESS TO INFORMATION

148. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gatherings or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

149. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other federal or state law privilege or protection recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information;

(3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

150. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### XXXII. CERTIFICATION OF SETTLING DE MINIMIS DEFENDANTS

151. By signing this Consent Decree, each Settling De Minimis Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good-faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).



d. fully complied with any and all information disclosure and production obligations imposed upon or assumed by participants in the Court-Authorized ADR Allocation Process.

### XXXIII. RETENTION OF RECORDS

152. Until 10 years after the Settling Non-De Minimis Defendants' receipt of EPA's notification pursuant to Paragraph 57.b. of Section XVI. (Certification of Completion of the Work), each Settling Non-De Minimis Defendant shall preserve and retain, at a location(s) to be determined by the Settling Non-De Minimis Defendants within 6 months of the effective date of this Consent Decree, one copy of all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Non-De Minimis Defendants' receipt of EPA's notification pursuant to Paragraph 57.b. of Section XVI (Certification of Completion of the Work), Settling Non-De Minimis Defendants shall also instruct their contractors and agents to preserve one copy of all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

153. Until Settling De Minimis Defendants' receipt of EPA's notification pursuant to Paragraph 56.b. of Section XVI. (Certification of Completion of the Remedial Action), each Settling De Minimis Defendant shall preserve and retain, at a location(s) to be determined by the Settling De Minimis Defendants within 6 months of the effective date of this Consent Decree, one copy of all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the liability of any person for response actions

conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

154. At the conclusion of the applicable document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other federal or state law privilege or protection recognized by federal law. If the Settling Defendants assert such a privilege or protection, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

155. Each Settling Non-De Minimis Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C.

§§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and that it has fully complied with any and all information disclosure and production obligations imposed upon or assumed by participants in the Court-Authorized ADR Allocation Process.

156. The United States acknowledges that each Settling Federal Agency and each Settling De Minimis Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(c) and 122(c) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e); and Section 3007 of RCRA, 42 U.S.C. § 6927.

#### XXXIV. NOTICES AND SUBMISSIONS

157. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. For purposes of complying with their collective obligations under this Section, Settling Defendants may act or respond through an authorized representative. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Agencies, the Settling De Minimis Federal Agencies, the State, and the Settling Generator/Transporter Defendants, respectively. Notice to any Settling Owner/Operator Defendant or to any Settling De Minimis Defendant shall be sent to the person designated as the appropriate Agent Authorized to Accept Service on that Party's signature page to this Consent Decree.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: DJ# 90-11-3-1620

and

Chief, Environmental Defense Section  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Re: DJ# 90-11-6-128

As to EPA:

William E. Muno  
Director, Superfund Division  
United States Environmental Protection Agency  
Region V  
77 W. Jackson  
Chicago, IL 60604

and

Scott Hanson  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region V, C-14J  
77 W. Jackson Blvd.  
Chicago, IL 60604

and

Sherry L. Estes  
Associate Regional Counsel  
United States Environmental Protection Agency  
Region V, C-14J  
77 W. Jackson  
Chicago, IL 60604

As to the Settling Generator/Transporter Defendants:

Benny Baker  
Settling Generator/Transporter Defendants'  
Project Coordinator  
The Dow Chemical Company  
2020 Willard H. Dow Center  
Midland, MI 48674  
(517) 636-0787 (phone)  
(517) 636-1364 (telefax)  
E-mail: bbaker@dow.com

Michael J. O'Callaghan  
Skinner Landfill Work Group  
Shumaker, Loop & Kendrick, LLP  
41 S. High Street, Suite 2210  
Columbus, OH 43215  
(614)463-9441 (phone)  
(614) 436-1108 (telefax)

Charles Terwilliger, Jr.  
Skinner Landfill Work Group  
Glenn Springs Holdings, Inc.  
2480 Fortune Drive, Suite 300  
Lexington, KY 40509  
(606) 543-2177 (phone)  
(606) 543-2171 (telefax)

**XXXV. EFFECTIVE DATE**

158. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

**XXXVI. RETENTION OF JURISDICTION**

159. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or

modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXV. (Dispute Resolution) hereof.

#### XXXVII. APPENDICES

160. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the Remedial Design.

"Appendix B-1" is the drawing of the Site indicating the Points of Compliance.

"Appendix B-2" are the Revised Modified Trigger Levels.

"Appendix B-3" is the Remedial Design SOW.

"Appendix C-1" is the legal description of the Site.

"Appendix C-2" is the map of the Site.

"Appendix C-3" is the model easement related to the requirements in Paragraphs 27. and 28. of this Consent Decree.

"Appendix D" is the complete list of the Settling Generator/Transporter Defendants.

"Appendix E" is the complete list of the Settling Owner/Operator Defendants, and includes the spouse of the Settling Owner/Operator Defendant, who is executing this Consent Decree only for the purposes of the waiver of his dower rights in the Site.

"Appendix F" is the complete list of Settling Federal Agencies and Settling De Minimis Federal Agencies. Column A of this Appendix designates the amount that each Agency will pay to the Skinner Landfill Special Account; Column B of this Appendix designates the amount that each Settling De Minimis Federal Agency will pay to the Plaintiffs' Group.

"Appendix G" is the complete list of Settling De Minimis Defendants. Column A of this Appendix designates the amount that each Settling De Minimis Defendant Agency will pay to

the Skinner Landfill Special Account; Column B of this Appendix designates the amount that each Settling De Minimis Defendant will pay to the Plaintiffs' Group.

"Appendix H" is the 1999 Contingencies Cost Estimate.

### XXXIII. COMMUNITY RELATIONS

161. Settling Generator/Transporter and Settling Owner/Operator Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Generator/Transporter and Settling Owner/Operator Defendants under the Plan. Settling Generator/Transporter and Settling Owner/Operator Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA, Settling Generator/Transporter and Settling Owner/Operator Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site.

### XXXIX. MODIFICATION

162. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

163. Except as provided in Paragraph 15 ("Modification of the Remedial Design or Related Work Plans"), no material modifications shall be made to the Remedial Design without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Design that do not materially alter that document may be made by written agreement

between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Generator/Transporter Defendants.

164. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

#### XL. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

165. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree, as lodged, without further notice.

166. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XLI. SIGNATORIES/SERVICE

167. Each undersigned representative of a party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

168. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

169. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on



behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XLH. FINAL JUDGMENT

170. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R.Civ. P. 54.


SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Elsa Skinner Morgan, et al., relating to the Skinner Landfill Superfund Site.

Date: \_\_\_\_\_, fA /\*>

FOR THE UNITED STATES OF AMERICA



Lo's J. Shiffer/  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

---

Elliot M. Rockier  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

---

Thomas A. Lorenzen  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Sharon J. Zealey  
United States Attorney  
Southern District of Ohio

By: \_\_\_\_\_

Assistant U.S. Attorney  
Southern District of Ohio  
100 East Fifth Street, Room 220  
Cincinnati, Ohio 45202

---

William E. Muno  
Director, Superfund Division  
United States Environmental Protection Agency,  
Region V  
77 W. Jackson Blvd.  
Chicago, IL 60604

\_\_\_\_\_  
Sherry L. Estes  
Associate Regional Counsel  
U.S. Environmental Protection Agency  
Region V, C-14J  
77 W. Jackson Blvd.  
Chicago, IL 60604-3590

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Elsa Skinner Morgan, et al., relating to the Skinner Landfill Superfund Site.

FOR \_\_\_\_\_

Date: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Elsa Skinner Morgan, et al., relating to the Skinner Landfill Superfund Site.

Signed and acknowledged in the presence of:  
(Witnesses as to the signatures of both Elsa Skinner-Morgan and David Morgan).

Sign here \_\_\_\_\_

\_\_\_\_\_  
Elsa Skinner-Morgan

Print here \_\_\_\_\_

Sign here \_\_\_\_\_

\_\_\_\_\_  
David Morgan

Print here \_\_\_\_\_

STATE OF OHIO            )  
                                  ) SS.  
COUNTY OF BUTLER     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999, by Elsa Skinner-Morgan, and David Morgan, wife and husband.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name:

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

## **APPENDIX D**

### **SETTLING GENERATOR/TRANSPORTER DEFENDANTS**

Anchor Hocking Corporation

Chemical Leaman

The Dow Chemical Company

Ford Motor Company'

Formica Corporation

Henkel Corporation --

GE Aircraft Engines

General Motors Corporation

King Wrecking Company, Inc.

King Container Services, Inc.

Monsanto Company

Oxy USA Inc.

Velsicol Chemical Corporation

## **APPENDIX F**

### **Amounts to be Paid by Settling Federal Agencies and Settling De Minimis Federal Agencies**

<b><u>PARTY</u></b>	<b><u>SHARE</u></b>	
<b><u>Settling Federal Agencies</u></b>	\$602,559.12	
United States Defense Logistics Agency		
United States General Services Administration		
<b><u>Settling- De Minimis Federal Agencies</u></b>	<b><u>A</u></b>	<b><u>B</u></b>
United States Department of the Army	\$2,158 .16	\$137.76
United States Air Force	\$43,155 .43	\$2,754.60
United States Information Agency	\$11,865 .98	\$757.40
United States Postal Service	\$25,356 .46	\$1,618.50

*Skinner Landfill - Appendix G*  
*List of Settling De Minimis Parties*

**APPENDIX G**  
**DE MINIMIS PARTIES**

	<u>TOTAL</u>	<u>COLUMN A</u>	<u>COLUMN B</u>
1) <u>AMF fbov its alleged indemnitor)</u>	\$2,000	\$1,880	\$120
2) <u>American Premier Underwriters, Inc.</u>	\$11,479.60	\$10,790.82	\$688.77
3) <u>American Standard, Inc. ffor Steelcraft)</u>	\$2,295.92	\$2,158.16	\$137.75
4) <u>Andrew Jergens Corp.</u>	\$6,453.62	\$6066.40	\$387.21
5) <u>Avon Products</u>	\$2,000	\$1,880	\$120
6) <u>B.E. Goodrich Company</u>	\$5,735.62	\$5^91.48	\$344.13
7) <u>BEI</u>	\$81,179.64	\$81,179.64	0
8) <u>BP Amoco</u>	\$3,188	\$3,188	0
9) <u>BP Exploration &amp; Oil Inc.</u>	\$5,627.09	\$5,289.46	\$337.62
10) <u>Bayer Corporation ffor itself and Mobay)</u>	5100,000	\$100,000	0
ID. <u>Borden Chemical, Inc.</u>	\$2,000	\$1,880	\$120
12) <u>Borden, Inc.</u>	\$2,000	\$1,880	\$120
13) <u>Butler County</u>	\$2,000	\$1,880	\$120
14) <u>CM. Paula Company</u>	\$22,959.19	\$21,581.63	\$1377.55
15) <u>Champion International Corporation</u>	\$2,000	\$1,880	\$120
16) <u>Ciba Specialty Chemicals Corporation</u>	\$90,000	\$90,000	0
<u>(the successor-in-interest of Ciba-Geiev Corporation</u>			
<u>for purposes of this matter by assumption.</u>			
<u>with the approval of Novartis Corporation)</u>			
17) <u>Cincinnati Enquirer</u>	\$159378.53	\$149,815.81	\$9,562.72
18) <u>Cincinnati Gas &amp; Electric</u>	\$2,295.92	\$2,158.16	\$137.75
19) <u>City of Fairfield</u>	\$2,000	\$1,880	\$120
20) <u>City of Montgomery</u>	\$7,689.24	\$7,227.88	\$461.35
21) <u>City of Reading</u>	\$2,000	\$1,880	\$120
22) <u>City of Silverton</u>	\$3,911.41	\$3,676.72	\$234.68
23) <u>Consolidated Rail</u>	\$2,000	\$1,880	\$120
24) <u>Cytex Industries, Inc.</u>	\$2,000	\$1,880	\$120
25) <u>E.I. duPont de Nemours and Company</u>	\$90,000	\$90,000	0
<u>ffor itself, Remington Arms Corporation</u>			
<u>and Conoco, Inc.)</u>			
26) <u>Elf Atochem North America, Inc.</u>	\$100,000	\$100,000	0
<u>ffor itself, M &amp; T Chemicals,</u>			
<u>and their predecessors in interest)</u>			
27) <u>Georgia Pacific</u>	\$207309.77	\$207309.77	0
28) <u>Globe Valve Division</u>	\$2,000	\$1,880	\$120
29) <u>Hilton-Davis Company</u>	\$2,000	\$1,880	\$120

*Skinner Landfill - Appendix G*  
*List of Settling De Minimis Parties*

	<u>TOTAL</u>	<u>COLUMN A</u>	<u>COLUMN B</u>
30) <u>Honeywell International Inc.</u> <u>((formerly known as Allied Signal Inc.))</u> <u>a successor to Allied Corporation</u> <u>(also known as Allied Chemical Corporation))</u>	\$100,000	\$100,000	0
3D) <u>I&amp;J Distributing Co fd/b/a Watson's)</u>	\$6,612.25	\$6,215.51	\$396.73
32) <u>Johnston Coca-Cola Bottling Group, Inc.</u>	\$17,674.40	\$16,613.93	\$1,060.46
33) <u>Marathon Oil Company</u>	\$2,000	\$1,880	\$120
34) <u>Masonite</u>	\$159,225.53	\$159,225.53	0
35) <u>Mecco, Inc.</u>	\$7,163.27	\$6,733.47	\$429.79
36) <u>Merrell Pharmaceuticals Inc.</u>	\$100,000	\$100,000	0
37) <u>Morton International, Inc.</u>	\$12,673.47	\$11,913.06	\$760.40
38) <u>MVM</u>	\$11,512	\$11,512	0
39) <u>Newberry Construction Company</u>	\$33,161.42	\$31,171.73	\$1,989.68
40) <u>Occidental Chemical Corporation</u> <u>(successor to Diamond Shamrock Chemicals</u> <u>Company, formerly Diamond Shamrock Corporation)</u>	\$2,000	\$1,880	\$120
41) <u>PPG</u>	\$95,000	\$95,000	0
42) <u>Procter &amp; Gamble</u>	\$44,991.66	\$42,292.16	\$2,699.50
43) <u>Queen City Barrel</u>	\$2,000	\$1,880	\$120
44) <u>Ralcorp Holdings, Inc.</u>	\$135,843.58	\$135,843.58	0
45) <u>Rohm and Haas Company</u>	\$100,000	\$100,000	0
46) <u>Rumpke Sanitary Landfill, Inc.</u>	\$10,327.46	\$9,707.81	\$619.64
47) <u>Shell Oil Company</u>	\$2,000	\$1,880	\$120
48) <u>Sun Oil Company</u>	\$2,000	\$1,880	\$120
49) <u>Texaco, Inc.</u>	\$2,000	\$1,880	\$120
50) <u>Tyco International ("U.S.). Inc.</u> <u>(For itself and Ludlow Corporation)</u>	\$2,000	\$1,880	\$120
51) <u>Union Carbide Corporation</u>	\$90,000	\$90,000	0
52) <u>United Waste Water Services, Inc.</u>	\$2,000	\$1,880	\$120
53) <u>Village of Glendale</u>	\$3,685.99	\$3,464.83	\$221.15



## APPENDIX H

### SKINNER LANDFILL SUPERFUND SITE - LIST OF REMEDIAL CONTINGENCIES

Remedial Contingency Associated With:	1999 Estimated Cost of Remedial Contingent
1. Treatment and disposal of Contaminated Site Groundwater Organic chemicals	
- Capital cost	\$279,153
- O & M and disposal cost	\$2,066,172
2. Treatment and disposal of Contaminated Site Groundwater Inorganic chemicals	
- Capital cost	\$129,000
- O & M and disposal cost	\$2,000,000
3. Diversion of upgradient groundwater flow	\$412,674
4. Response actions outside the scope of the ROD that Settling Generator/Transporter Defendants agree to implement as a result of the 5-year review	\$0
Total	\$4,886,999